TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1286~~. ~~779~~ ~~430~~ 182

THE KEOKUK AND WESTERN RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI AT THE RELATION OF
WILLIAM H. WINE, COLLECTOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED SEPTEMBER 17, 1890.

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1 In the Supreme Court of the State of Missouri.

THE STATE OF MISSOURI at the Relation of WILLIAM H. WINE, Collector, Respondent,
vs.
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Citation.

UNITED STATES OF AMERICA, }
State of Missouri, } *ss:*

United States of America to the State of Missouri at the relation of William H. Wine, collector, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1890, next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The Keokuk and Western Railroad Company is plaintiff in error and you are defendant in error, to show cause, if there be any, why the judgment and decision rendered against the said plaintiff in error, as in the said writ
2 of error mentioned, should not be corrected and why speedy justice should not be obtained by the parties in that behalf.

Witness the Honorable Robert D. Ray, chief justice of the supreme court of Missouri, this 25th day of November, A. D. 1889.

R. D. RAY,
Chief Justice of the Supreme Court of Missouri.

A true copy of the above & foregoing citation was delivered to me on the 2 day of December, 1889, & I accept due & legal service of same.

JOHN C. MOORE,
Attorney for Defendant in Error.

[Endorsed:] 4699. In Supreme Court of United States. Keokuk & Western Railroad Company, plaintiff in error, *vs.* The State of Missouri at relation of Wm. H. Wine, def't in error. Citation & service of same. Filed Nov. 26, '89. H. W. Ewing, clerk, by Rowan Ray, D. C.

3 In the Supreme Court of the State of Missouri.

THE STATE OF MISSOURI at the Relation of WILLIAM H. WINE, Collector, Respondent,
vs.
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Writ of Error.

UNITED STATES OF AMERICA,
State of Missouri, } *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of Missouri, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the said Keokuk and Western Railroad Company, appellants, and The State of Missouri at the relation of William H. Wine, collector, respondent, wherein was drawn in question the validity of a statute of the said State of Missouri on the 4 ground of its being repugnant to section 10, article 1, of the Constitution of the United States and the decision was in favor of its validity.

That in the judgment and decision of said supreme court of Missouri there is drawn in question the validity of certain statutes of the State of Missouri, namely, chapter 145, of the assessment and collection of the revenue, of the Revised Statutes of Missouri of 1879, with its amendments thereto, on the ground that the same are in contravention of and repugnant to the Constitution of the United States, and particularly that such laws of the State of Missouri are in contravention of and repugnant to section 10, article 1, of the Constitution of the United States.

That the decision and judgment of said supreme court of Missouri is in favor of the validity of said statute laws of the said State of Missouri specially claimed by respondent to be invalid under said article and section of the Constitution of the United States.

Also there was drawn in question in the judgment and decision of said supreme court the validity of certain statutes of the State of Missiouri, namely, An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, and a further statute of the said State, namely, An act to authorize the consolidation of railroad companies in this State with companies owning connecting railroads in adjoining States, approved March 2nd, 1869, and the decision was against the validity of said statutes, in this: that by the 9th section of the said act approved February 9th, 1859, the stock of said railway company shall be exempt from taxation for the period of twenty years after its completion. This 5 language, as understood and construed by the courts of said State, exempts the property of said railroad company.

That the said Alexandria and Bloomfield Railroad Company complied with the terms of said charter and by legislative authority changed its name to the Alexandria and Nebraska railroad, and afterwards, on or about the 3rd day of May, 1870, duly and legally consolidated, under the provisions of the said act approved March 2nd, 1869, with the Iowa Southern Railway Company, the tracks of the respective corporations connecting at the State line between the States of Missouri and Iowa, the said consolidated railway company taking the name of the Missouri, Iowa and Nebraska Railway Company. The said last-named company completed and put in operation said railroad, as provided in the said act incorporating the said Alexandria and Bloomfield Railroad Company, about the 3rd day of December, 1872.

That by virtue of the provisions of said laws and the compliance with the terms thereof said Missouri, Iowa and Nebraska Railway Company was entitled to the privilege of exemption from taxation for the year 1886, and claimed the same in said suit and under the said section 10, article 1, of the Constitution of the United States, and the decision was against the validity of said laws and the privilege of exemption from taxation claimed thereunder.

That in the record and proceedings in said cause it appears that the said supreme court of Missouri, in about the year 1877, in a cause wherein said Scotland County was appellant and the said Missouri, Iowa and Nebraska Railway Company was respondent, decided and affirmed the validity of such exemption; that after-
wards, about December 3rd, 1886, and while said decision was
6 in full force and effect, the appellant, Keokuk and Western
Railroad Company, herein purchased said railway property in good faith for value, relying on the said laws as construed by said supreme court, and that therefore the decision as now made impairs the obligation of contract within the meaning of said section 10, article 1, of the Constitution of the United States, specially set up and claimed under such article and section of the Constitution of the United States.

A manifest error hath happened, to the great damage of the said Keokuk and Western Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 25th day of November, in the year of our Lord one thousand eight hundred and eighty-nine.

{Seal of the United States Circuit Court for the Western District of Missouri, Central Division.}

H. C. GEISBERG,
Clerk of the Circuit Court of the United States for the Western District of the State of Missouri, Central Division.

7 Allowed by R. D. Ray, chief justice of the supreme court of Missouri.

Dated November 25th, 1889.

R. D. RAY, *C. J.*

[Endorsed:] 4699. State *ex rel.* Wine, collector, &c., *vs.* Keokuk & Western R'y Co. Pet. for writ of error & writ of error to Sup. C't U. S. Filed Nov. 26, 1889. Henry W. Ewing, clerk.

8 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 31st day of March, A. D. 1888, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript, which is in words and figures as follows, to wit:

In the Circuit Court of Scotland County, Missouri, Before August Term, A. D. 1887.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Be it remembered that on February 28, 1887, plaintiff filed in the office of the clerk of the circuit court his petition in the above-entitled cause.

Whereupon a summons issued for defendant, which was served and returned according to law.

And afterwards, on August 4, 1887, plaintiff filed, by leave of said Scotland county circuit court, his amended petition in above-entitled cause; which amended petition is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Scotland, }

In Circuit Court. August Term, 1887.

9 *Amended Petition.*

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue of Scotland County, Plaintiff,

against

THE KEOKUK AND WESTERN RAILROAD COMPANY, a Railroad Corporation, Defendant.

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Scotland county, alleges that William H. Wine is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law and is the owner and was the owner on or about the 31st day of December, 1886, and had control of the following railroad property in said county, to wit: Twenty-two and one-half miles of road-bed and superstructure, with right of way, rolling stock, water tanks, engines, cars, depots, and other buildings; the north half of lot nine (9), in Oak Ridge Addition to the city of Memphis, in said county, and lots seven (7) and eight (8), in block five (5), in the town of Granger, in said county, which was then and there and had for more than fifteen years before been subject to taxation for State, county, school, municipal, and other purposes: that there was legally assessed and levied against such property for the year ending August 1st, 1886, for State, county, school, municipal, and other purposes the aggregate sum of fourteen hundred and ninety-two dollars (1492) and seven (7) cents.

10 That said assessment and levy were made while said property was in the hands and under the control of the Missouri, Iowa and Nebraska Railway Company, a corporation existing according to law, and that defendant, after said levy and before the filing of this suit, became the purchaser and owner of said property and took control of same subject to the lien of said taxes, and assumed the liability to pay the same.

That of the taxes so assessed and levied there is now due and unpaid for State purposes the sum of four hundred and three dollars; for county purposes, the sum of six hundred and four and $\frac{50}{100}$ dollars; for school purposes in said county, the sum of four hundred and sixty-three and $\frac{45}{100}$ dollars, and for city, town, and other municipal purposes, the sum of twenty-one and $\frac{12}{100}$ dollars, amounting in the aggregate to the sum of fourteen hundred and ninety-two and $\frac{7}{100}$ dollors; all which is evidenced by a back-tax bill in the name of the Missouri, Iowa and Nebraska Railway Company herewith filed as against defendant, because of being the purchaser of said property after said assessment and levy, which sum the defendant has failed to pay, as required by law.

That plaintiff is entitled to recover of defendant a penalty at the rate of one per centum each month from the 1st day of January, 1887, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are by virtue of the laws of this State a prior lien on said road-bed and real estate and other property, and that defendant purchased same subject to such lien.

11 Wherefore plaintiff prays judgment for the said sum of fourteen hundred and ninety-two and [illegible] dollars and the penalty thereon until the same shall be paid, and for a reasonable attorney's fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

WILLIAM H. WINE, *Collector*.
By JOHN C. MOORE.
MYERS & MOORE,
Att'ys Employed by W. H. Wine, Col.,
by Consent of Scotland County Court.

And afterwards, on August 5, 1887, defendant filed its answer to said amended petition; which answer is in words and figures as follows, to wit:

STATE OF MISSOURI, } *ss:*
County of Scotland, }

In the Circuit Court of Scotland County, Missouri. August Term, 1887.

STATE OF MISSOURI at the Relation and to the Use of W. H. WINE, Collector of the Revenue of Scotland County, Plaintiff,
against
THE KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

12 Now comes the defendant and for answer to the plaintiff's amended petition herein states that on or about October 22nd, 1880, and on supplemental proceedings thereto on July 8th, 1886, decrees of foreclosure were entered in the circuit court of the United States for the southern district of Iowa, eastern division, at Keokuk, foreclosing a mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated June 1st, 1870, to the Farmers' Loan and Trust Company of New York, trustee, to secure certain bonds in said mortgage described; that said foreclosure decrees were entered in the cause in said United States circuit court pending, entitled The Farmers' Loan and Trust Company against The Missouri, Iowa and Nebraska Railway Company and others; that thereafter, on the 19th day of August, 1886, in pursuance of said decree, all the said railway property and franchises of the said Missouri, Iowa and Nebraska Railway Company were sold in the city of Keokuk and said State of Iowa to Morris K. Jessup and Henry C. Thacher by P. T.

Lomax, Esq., master in chancery in said court and special commissioner to make said sale; that the said sale, on or about the 21st day of September, was duly confirmed by said United States court, and that thereafter the said Morris K. Jessup and Henry C. Thacher, having paid the purchase price as bid, the said master was by said court ordered and directed to convey to said Jessup and Thacher the property, premises, and franchises of the said railway aforesaid; in pursuance of which thereafter the said Lomax, as such master, did by deed duly convey said railway property, premises, and franchises decreed to be sold to the said Jessup and Thacher, which conveyance included all the railway property, premises, and franchises in the States of Iowa and Missouri, including the railway and property in plaintiff's petition herein described. 13

Thereafter the said Jessup and Thacher, on good and sufficient consideration, conveyed the premises, property, and franchises aforesaid to The Keokuk and Western Railroad Company, the defendant herein; that in pursuance of said conveyance said Keokuk and Western Railroad Company, on or about the third day of December, 1886, entered into possession of said railway property and franchises, and have been since and are still owning, using, and operating said property free from any liability or obligation to the said Missouri, Iowa and Nebraska railway.

Defendant, for further answer, states that by an act of the General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Company, approved February 9th, 1857, Alexandria and Bloomfield Railroad Company became and was duly incorporated, possessed of all the power, privileges, rights, immunities, exemptions, franchises, and properties and subject to all the liabilities, obligations, and restrictions mentioned in said act.

That on or about the 13th day of September, A. D. 1864, said company was duly organized and directors elected as required by section 4 of said act, and immediately said company commenced and proceeded to carry out its proper business and railroad operations under the privileges and conditions in said act mentioned.

That by an act of the General Assembly entitled " An act to amend an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857, which amendatory act was approved February 19th, 1866, and by the due acceptance of the first section of said amendatory act the corporate name of said railroad company was changed to that of the Alexandria and Nebraska City railroad. 14

That in pursuance of the general laws of the States of Missouri and Iowa authorizing the consolidation of railroad companies owning connecting railroad lines in said States the said Alexandria and Nebraska City Railroad Company, on the 3rd day of May, A. D. 1870, duly and legally consolidated with the Iowa Southern Railway Company, a railroad company duly incorporated, organized, and existing under the laws of the State of Iowa, and that thereafter the said Alexandria and Nebraska City Railroad Company and the said Iowa Southern Railway Company became merged and consolidated into and formed one company under the corporate name of Missouri, Iowa and Nebraska Railway Company, the defendant herein.

This defendant further states that the said Missouri, Iowa and Nebraska Railway Company by such consolidation succeeded to and became vested with all the rights, franchises, privileges and immunities, property and exemptions belonging to or in anywise appertaining to the said Alexandria & Bloomfield Railroad Company, and that section nine of the charter of the said Alexandria & Bloomfield Railroad Company is as follows:

"The stock of said company shall be exempt from taxation for the period of twenty years after its completion."

Said railway was completed about December 31st, 1872. Wherefore defendant avers said period of twenty years has not yet elapsed.

That by reason of the exemption from taxation in said charter and the facts herein stated this defendant is advised and believes
and so avers and charges that the property described in the peti-
15 tion herein is not nor can it be made liable for the taxes, interest,
and penalties claimed in said petition nor for any part of the same, and that therefore defendant is not legally bound to pay same or any part thereof; all of which it pleads in bar of any recovery herein.

Defendant, further answering, states that at the April term, A. D. 1873, of the circuit court of said Scotland county, Missouri, plaintiff herein brought suit against the said Missouri, Iowa and Nebraska Railway Company, as defendant, to recover certain State, county, and municipal taxes alleged to be due and payable for the year 1872 on the railway property described in the petition herein; that to said suit the said Missouri, Iowa and Nebraska Railway Company appeared and made answer, alleging, among other things, that the said railway company was not liable to pay said taxes nor any part thereof by reason of exemption contained in said section nine of said Alexandria & Bloomfield railroad charter, and thereafter such proceedings were had in said cause in said court that the said court sustained the said answer and rendered final judgment in favor of said railroad company, the said circuit court holding and deciding that the said section nine of the Alexandria & Bloomfield charter did exempt the property of the said Missouri, Iowa and Nebraska Railway Company described in the petition herein from all taxes, whether State, county, municipal, or otherwise, for the period of twenty years after completion of said railway; that thereafter such further proceedings were had in said cause on appeal to the supreme court of Missouri — the judgments of the Scotland county circuit court was in all things affirmed. The report of said cause is found
in the 65th volume, at page 123, of the Missouri Supreme
16 Court Reports, the record of which cause defendant is willing
and ready to produce when and where this honorable court shall direct.

That thereafter, in the year 1881, James Secor and other stockholders of the said Missouri, Iowa and Nebraska Railway Company

filed a bill in the circuit court of the United States for the eastern district of Missouri praying an injunction against the said Missouri, Iowa & Nebraska Railway Company from paying certain taxes alleged to be due upon the said railway property in said Scotland county and also Clarke and Schuyler counties, in said State, and also to enjoin the county court, the judges thereof, and the collectors of revenue of said counties from collecting any taxes levied upon said railway property in said counties of Clarke, Scotland, and Schuyler for the year 1881 or any previous years, and that thereafter such proceedings were had in said court in said cause that a temporary injunction was granted, which, on the hearing of the merits thereof, was made final and perpetual; which injunction remains unreversed and in full force and effect, and is reported in 9th Federal Reporter, page 809. In this suit the complainant charged that the said property of the defendant railway company was not liable to pay said taxes or any part thereof by reason of the exemption contained in the said Alexandria & Bloomfield railroad charter, and the said circuit court so held in granting said final injunction; and defendant avers and charges by reason of the judgments rendered as aforesaid in the said supreme court of Missouri and of said circuit court of the United States the matters and things set forth in the petition herein have been and are fully adjudicated and determined between
the said plaintiff and the Missouri, Iowa & Nebraska Rail-
17 way Company, and the said plaintiff is *not* estopped from
further litigating any of the matters in said petition stated;
all of which your defendant pleads in bar to any recovery herein.

Defendant purchased and acquired said railway property relying upon the fact that said property was not liable for any part of said taxes. Defendant denies each and every other allegation in said petition contained.

Having fully answered, defendant prays to be discharged with its costs.

F. T. HUGHES,
R. D. CRAMER,
Att'ys for Defendant.

And afterwards, on August 5th, 1887, the plaintiff filed his replication to defendant's answer; which replication is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Scotland,

In the Circuit Court of Scotland County. August Term, 1887.

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector, Plaintiff,
vs.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Reply.

Plaintiff, for reply to defendant's answer, alleges that full

18 and complete foreclosure of the mortgage given by the Missouri, Iowa and Nebraska Railway Company (hereinafter called the M., I. & N. for convenience) to the said Farmers' Loan and Trust Company was made on or about the 22nd day of October, 1880, but that prior thereto, to wit, on or about the 3rd day of September, 1880, the M., I. & N. and a committee of the M., I. & N. bondholders sold and conveyed said property to the Wabash, St. Louis and Pacific Railroad Company, a corporation existing according to law, and delivered the possession of the property to the last-named corporation, but that said sale was designated as a lease for the period of ninety-nine years.

That the execution issued on such judgment was stayed by agreement among the parties, and the Wabash, St. Louis and Pacific Company undertook to pay off the debt and would have done so but for becoming insolvent in 1884.

But that said Wabash took control and operated said property as their own, and that any exemption which the M., I. & N. might have enjoyed prior thereto was thereby surrendered; that defendant's grantor, the holders of the bonds of such grantors, The Farmers' Loan and Trust Company and the said Wabash Company were the parties to such sale and delivery and stay of execution and such was done without plaintiff's knowledge or consent.

That said supplementary proceedings were not instituted until it was discovered that said Wabash Company was insolvent and unable to discharge the debt secured by said trust deed, and that the several parties by surrendering up their Wabash stock, which had been issued in lieu of M., I. & N. stock, procured a decree to
19 have the property sold on an execution issued on the old decree, and defendant became the purchaser and subject to pay the taxes accumulated after liability attached under Wabash control if not before.

Plaintiff admits that a charter was granted to the Alexandria & Bloomfield Company at the time stated, and that the name was changed as stated, and that the consolidation was made as stated with the Iowa Southern, and that thus arose the M., I. & N., but denies that said M., I. & N. succeeds to all the rights, franchises, privileges, immunities, property, and exemptions of said Alexandria and Bloomfield Company.

Plaintiff admits that said last-named company had a charter, the 9th section of which was in the words quoted, and alleges that the 11th section of said charter required said road to commence construction within ten years from the date of charter and to complete the same within ten years thereafter, which was not done, and that the completion of said road Dec. 31, 1883, as alleged in defendant's answer, is more than twenty-six years after the date of said charter.

Plaintiff denies that the matters now at issue were adjudicated as alleged in said answer, and avers that the facts now presented to this court are for the first time presented for adjudication, and denies that he is estopped from pleading these facts. Plaintiff further states that in February, 1886, when the said name was changed, as alleged, the route was also changed, making the whole line of the road in-

this State, and the intermediate and terminal pointst were changed,
and new privileges and franchises were granted by the Legislature,
but that the exempting clause was not re-enacted, and plaintiff
20 avers that the new act thus obtained by said company con-
stituted a new contract, which the Alexandria & Bloomfield
Company accepted, and thus surrendered the privilege of exemption,
if it ever existed.

Plaintiff further states that — the time said charter was granted that section 7 of chapter 34 of the Revised Statutes of Missouri for the year 1885 was in full force as the general law governing all corporations of every kind, and is as follows:

"SECTION 7. The charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension, and repeal in the discretion of the Legislature."

That the Legislature, on the 27th day of February, 1875, by an act entitled "An act to repeal *the* section nine of an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, A. D. 1857, and to subject the stock of said railroad company to taxation, among other things, enacted the following:

"SECTION 1. The ninth section of the act entitled An act to incorporate the Alexandria and Bloomfield Railway Company, approved February 9th, A. D. 1857, is hereby repealed.

"SECTION 2. All the property of the Missouri, Iowa & Nebraska Railway Company, whether real, personal, or mixed, and the stock of said company shall hereafter be subject to taxation for all the purposes for which other property in this State is liable to be taxed.

"SECTION 3. All the laws now in force for assessing and collecting taxes on railroads shall apply and be in force as to the Missouri, Iowa and Nebraska Railway Company and its officers with like force and effect as to other railroads in this State."

21 Plaintiff further avers that the language of said exemption cannot be made to apply to taxes due to Scotland county, nor to the city of Memphis, for the reason that it does not purport to be a contract with said county nor city.

Plaintiff further avers that said charter was not a contract made with the State of Missouri, and that there was not any consideration going from said company to the State, but that such as it was it was but a mere act of gratuity and enjoined the performance of duties which said company never complied with.

That the Legislature of Missouri never had the authority to grant immunity from taxation, such grant being in violation of section 19 of article 13 of the constitution of Missouri in force when said charter was granted.

That the said M., I. & N. Railway Company, in 1869 or 1870, sent its officers, agents, and servants into the county of Scotland for the purpose of securing a subscription of two hundred thousand dollars from said county in aid of the construction of said road, and other officers and servants stated that the charter of said road granted to said company immunity from taxation. They made many speeches

to the people in different places, and said officers, servants, and agents promised the people of said county that, although they were exempt, yet if they would sign petitions to the county court asking that such subscription be made that they would agree that the said company would pay all taxes that might be levied against the property of said company in this county; and the president of said road, one F. M. Drake, did, in a public speech, say that the said company would waive its right of exemption if the county
22 court would grant the bonds in aid of said road, and he, the
said Drake, did say to the county court of said county that if they would issue the bonds of said county in the sum of two hundred thousand dollars that the railroad company would waive any right of exemption from taxation which it might have, and he, the said Drake, did give to one Marion Cowell a written statement to that effect to show to the people of said county, whereby the people of said county were induced to sign and did sign petitions to the county court asking the issue of the county bonds in that amount; that the said Drake, by making such statements, induced the county court to issue, and they did issue, the bonds of said county in that sum to aid in such construction and did deliver the same to said company; that the people of said county would not have signed such petitions nor the county court issued such bonds but for the statement and argument of said officers, agents, and servants, and particularly said Drake, the president of said company; that therefore said company and defendant, the owner of said property, are estopped to deny their liability to taxation.

Plaintiff further states that immunity from taxation is a personal privilege, which, if it ever existed in the M., I. & N., could not be transferred to defendant, and that any exemption of the M., I. & N. could not be pleaded by defendant, but must be done by said M., I. & N.

That it is the duty of defendant to pay the taxes so assessed and to recover the same from its grantor.

WILLIAM H. WINE,
By JOHN C. MOORE.
MYERS & MOORE,
Attorneys Employed by William H. Wine, Collector, by Consent and Agreement of the County Court.

23 *Judgment. Rendered February* 6, 1888.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant,

Taxes.

Be it remembered that at the August term, 1887, of this court and on the ninth day of August, 1887, this cause coming on to be heard on the pleadings filed in said cause, and the plaintiff and defendant

appearing by attorneys, and all and singular the matters and facts being submitted to the court, and the court, after hearing all the evidence in the cause and the arguments of counsel, took said cause under advisement and for further consideration until the February term, 1888, of this court; and now, on this sixth day of February, one thousand eight hundred and eighty-eight, and on the first day of the February term, 1888, of this court, the court, after fully considering all the matters and facts and evidence in said cause, doth find that at the time of the commencement of this suit William H. Wine was the legally qualified and acting collector of Scotland county, Missouri, and that the defendant at the time of the institution of this suit — and still is a railroad corporation duly organized and existing according to law, and that the said defend-
24 ant owns, operates, and controls twenty-two and one-half
miles of railroad in said county, consisting of road-bed, superstructure, and right of way, together with the rolling stock, water tanks, engines, cars, depots, and other buildings; also lot nine (9), in Oak Ridge Addition to the city of Memphis, in said county, and lots seven (7) and eight (8), in block five (5), in the town of Granger, in said county.

The court further finds that all of the aforesaid property of defendant in said county was subject to taxation in said county for the year 1886, and that there was legally assessed and levied against the aforesaid property of the defendant in said county of Scotland for the year 1886, for State, county, school, municipal, and other purposes, the aggregate sum of fourteen hundred and ninety-two dollars and seven cents.

The court further finds that at the time of the assessment and levy of the aforesaid taxes against the said property of defendant that the said railroad and other property of defendant in said county was owned, operated, and controlled by the Missouri, Iowa & Nebraska Railway Company, a corporation duly organized and existing according to law, and that the aforesaid taxes so assessed and levied for the year 1886 was at the time of said levy a prior lien against defendant's said property in favor of the State of Missouri, and that after the aforesaid assessment and levy of said taxes was made and before the commencement of this suit the said Missouri, Iowa and Nebraska Railway Company sold and transferred its said railroad and other property in Scotland county to the defendant.

The court further finds that at the commencement of this
25 suit the aforesaid taxes so levied against said property was a
prior lien over all incumbrances against said property, and that the defendant took and now holds said railroad property in said county subject to payment of same.

The court further finds that of the aforesaid taxes so assessed and levied against said property of defendant for the year 1886 there is now due and unpaid for State purposes the sum of four hundred and three dollars, for county purposes the sum of six hundred and four and $\frac{50}{100}$ dollars, for school purposes in said county the sum of four hundred and sixty-three and $\frac{45}{100}$ dollars, and for city, town and other municipal purposes the sum of twenty-one and $\frac{12}{100}$ dollars, amounting in the aggregate to the sum of fourteen hundred and ninety-two dollars and seven cents, together with one per centum each month on said aggregate sum from the first day of January, 1887, until the same is paid, as penalties thereon.

It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the defendant, The Keokuk & Western Railroad Company, the said sum of fourteen hundred and ninety-two dollars and seven cents, the taxes and debt aforesaid found to be due, together with the penalties, interest, and costs thereon, and that the same be, and is hereby, considered and adjudged to be a first and prior lien in favor of the State of Missouri on the said road-bed, superstructure, and other property of defendant aforementioned in said county, and that a special *fieri facias* be issued against said property, and that the same be sold to satisfy said taxes, penalties, interest, and costs.

26 Be it remembered that the trial of this cause was begun at the August term, 1887, of this court, when the following proceedings were had, to wit:

Upon consent of the parties a jury was waived and the cause submitted to the court for hearing.

It was admitted in open court by both parties that the railway taxes sued for were levied on the property of said Missouri, Iowa and Nebraska Railway Company for the year stated in the amended petition, and that the amount claimed is the amount due, provided the court shall find that the plaintiff is entitled to recover on the law and facts in this case.

It was further admitted that the said railway, upon which the taxes were levied, was constructed and put in operation during the year eighteen hundred and seventy-one through said Scotland county, and that it was also completed to the State line between the States of Missouri and Iowa, as stated in the defendant's amended answer, about December, eighteen hundred and seventy-two.

Defendant then to sustain the issues on its part offered evidence as follows, to wit:

The charter of the Alexandria and Bloomfield Railroad Company, being an act of the General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, in words and figures as follows, to wit.

Also an act of the said General Assembly amending the charter thereof, entitled "An act to amend an act entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 19th, 1866."

27 Defendant then offered in evidence a duly certified copy of the articles of consolidation of the said Alexandria and Nebraska City railroad with the said Iowa Southern Railway Company, by which the said Missouri, Iowa and Nebraska Railway Company was formed, which is in words and figures as follows, to wit:

OFFICE OF THE SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigle, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of consolidation of the Iowa Southern Railway Company and the "Alexandria and Nebraska City Railroad Company" under the name and style of the "Missouri, Iowa and Nebraska Railway Company," filed May the 11th, 1870, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

Done at office this ninth day of September, A. D. eighteen hundred and seventy-three.

[SEAL.] EUGENE F. WEIGLE,
Secretary of State.

Articles of Consolidation.

Articles of consolidation made and entered into this — day of ——, in the year of our Lord one thousand eight hundred and seventy, between the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa, and the Alexandria and Nebraska City Railroad Company, a corporation existing under the laws of the State of Missouri. 28

Whereas the railways respectively owned by the said companies above named constitute a continuous line of railway for the passage of cars from the city of Alexandria, in the State of Missouri, to a point on the Missouri river in Iowa, near Nebraska City, in the State of Nebraska, and the directors of the said companies upon mature consideration have determined that the interests of the respective stockholders of said companies and the public interests and convenience will be greatly promoted by the union of their several roads into one road and by the consolidation of the respective stocks of said companies into one common consolidated stock;

And whereas the said companies are authorized by acts of the Legislatures of the said States of Iowa and Missouri to affect such union of their respective roads and to form by consolidation of their respective rights and franchises one company, and have agreed so to do upon the terms and conditions hereinafter mentioned and contained:

Now, therefore, this agreement, made by and between the corporations above named, parties hereto, under and by virtue of the authority conferred upon them by the laws of the said several States, witnesseth: That the said Iowa Southern Railway Company and the said Alexandria and Nebraska City Railroad Company do agree and each for itself doth severally agree that the said companies shall be consolidated into and form one corporation under the name and style of the Missouri, Iowa and Nebraska Railway Company, and in pursuance of the said acts of the Legislature of the said States of

Iowa and Missouri the said parties hereto do hereby prescribe the
following terms and conditions of the said consolidation, and
29 do respectively agree thereto and to the mode of carrying the
same into effect, as herein provided for:

Article 1st.

The directors of said Missouri, Iowa and Nebraska Railway Company shall be for the present thirteen in number, which said number may at any future election held by the stockholders, by a resolution first passed by a two-third vote of said stockholders, be reduced to nine in number, all of whom said directors shall be stockholders in the corporation.

The following-named persons shall constitute the first board of directors of said Missouri, Iowa and Nebraska Railway Company:

Jas. Fitzhenry, Geo. M. Ochiltree, E. Pratt Buell, Peter W. Plantz, Enoch Hinckley, William Bradley Bradley, S. A. Dickey, C. H. Howell, John A. Talbot, Jac. Rummel, C. W. Brown, J. A. Breazeale, and F. M. Drake, and shall hold their offices until the first Monday in January, A. D. 1871, as provided and in accordance with the provisions of this article.

Article 2nd.

Said directors shall, at their first meeting after their election, elect a president and vice-president from their own number, and shall also then or as soon thereafter as convenient elect or appoint a secretary, treasurer, and superintendent of said company and provide for the appointment of such other officers, engineer, clerks, agents, assistants, and other employees as they shall from time to time find necessary for the proper transaction of the business of said company.

Article 3rd.

The annual election of directors shall be held on the first
30 Monday of January of each year at Centerville, Iowa, provided
if such election be not held as aforesaid it may be held
at any subsequent period of which three weeks' notice shall be given in two newspapers on the line of said railroad, one of which shall be published at Centerville, Iowa, or wherever the principal place of business may at the time of said publication be, and the other in Missouri, unless said principal place of business should be in Missouri, in which case the publication should be in Iowa. The persons receiving the highest number of votes shall be directors to succeed those whose term of office shall have expired.

Article 4th.

Each stockholder shall be entitled to vote, in person or by proxy duly authorized, one vote for each share of stock he may own at the commencement of each election.

Article 5th.

After the consolidation herein provided for is perfected stockholders in said consolidated company only by surrender and exchange of their certificates in their several companies shall be entitled to vote at any meeting of the stockholders of said consolidated company.

Article 6th.

The capital stock of the said Missouri, Iowa and Nebraska Railway Company shall be thirteen millions of dollars, to be divided into one hundred and thirty thousand shares of one hundred dollars each, and the directors may increase the capital stock thereof when necessary upon the approval of a majority of the stockholders of said consolidated company.

31

Article 7th.

The private property of the stockholders is hereby exempted from liability for the debts of the company, except to the amount of the unpaid installments of any stockholder. The stock of said corporation shall be transferable under such rules and regulations as may be deemed expedient by the board of directors.

Article 8th.

Upon the surrender of the present certificates of stock, now issued and outstanding, of either of the companies herein consolidated, a like amount of the stock at par of the consolidated company shall, without delay after its consolidation, be issued in return therefor to the holders thereof.

Article 9th.

In all cases in which subscriptions or agreements with either of said companies parties hereto for the stock of either of said companies have been heretofore made by any person or persons or bodies corporate or politic, and said subscriptions or contracts for stock yet remain unpaid or unperformed either in whole or in part, the stock of said consolidated company shall, upon the payment of said subscription or performance of said contracts, be issued to the said subscribers in the same manner as the said several companies parties thereto would have been bound to issue their stock respectively had not this consolidation taken effect.

Article 10th.

All and singular the rights, franchises, privileges, real estate, depot
grounds, rights of way, road-bed, railway, iron rails, engines,
32 cars, machinery, rolling stock, debts, dues, demands, choses
in action, and property of every description, name, and nature
in which the said Iowa Southern Railway Company and the Alex-

andria and Nebraska City Railroad Company have respectively any right, title, or interest, whether in possession, reversion, or remainder, with the appurtenances, upon the ratification of these articles of consolidation, as herein and by law provided, and from thenceforth shall be held, owned, and controlled by the said Missouri, Iowa and Nebraska Railway Company, their successors and assigns, as fully and completely to all intents and purposes *and* the said companies do or can now hold, own, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in said Missouri, Iowa and Nebraska Railway Company.

Article 11th.

All the books, vouchers, records, muniments of title, and other documents pertaining to the business or property of the said several companies parties hereto shall be placed in the office of the secretary of said consolidated company, and the said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the office of the original companies.

Article 12th.

The principal place of transacting the business of the consolidated company shall be at Centerville, Appanoose county, Iowa, which place of business may be changed to any other point on said line at any time in accordance with the provisions of article sixteen of the articles of incorporation of said Iowa Southern Railway Company. 33

Article 13th.

The line of the consolidated railway shall extend continuously from the city of Alexandria, Clarke county, Missouri, on the Mississippi, its eastern terminus, as the same is now located and partially graded, to Centerville, in Appanoose county, Iowa; thence west to the Missouri river, as contemplated by the charter of the Iowa Southern Railway Company; and the said consolidated company shall complete and put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence westward to the Missouri river as soon as practicable, and shall continue to maintain and operate said railroad as a first-class road at, from, and between the said terminus throughout its entire length during the corporate existence of said consolidated company.

Article 14th.

The said consolidated company shall assume and fulfill and finally settle, pay, and dismiss all debts owing and all contracts and agreements or other obligations entered into by either of said companies of every kind and nature, legal and equitable.

Article 15th.

In order to facilitate the settlement of all claims, debts, or obligations of either of the companies parties hereto and properly protect
the interests of all parties interested it is agreed that an auditing committee from each of said companies parties hereto, consisting of three
members each, shall be appointed to audit and allow all just claims
against their said respective companies or such amounts thereof as
they shall find just and equitable. The said committee for
34 the auditing of the claims against the Iowa Southern Railway Company shall consist of C. W. Bowen, Jacob Rummel,
and John A. Talbot, and the said committee for the auditing of the
claims of the Alexandria and Nebraska City Railroad Company shall
consist of James Fitzhenry, Geo. M. Ochiltree, and Enoch Hinckley.

Article 16th.

The consolidated company, in order to raise money to *contract*, complete, equip, and operate the line of railway formed by this consolidation and every part thereof, shall have the right and power to borrow money to an amount not exceeding two-thirds of its capital stock and to issue the bonds of the consolidated company therefor and to secure the payment of the same by a first mortgage or deed of trust on all the property, rights, and franchises of the said consolidated company lying between the Mississippi and Missouri rivers in the States of Missouri and Iowa.

Article 17th.

It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies parties hereto at a meeting thereof, called separately for the purpose of taking the same into consideration. Due notice of the time and place of *each* meeting and the object thereof shall be given. The time of *each* meeting of the stockholders of the Iowa Southern Railway Company shall be on the 23rd day of April, A. D. 1870, and the place the town of Centerville, Appanoose county, Iowa. The time of such meeting of the stockholders of the said Alexandria and Nebraska City Railroad Company shall be on the 2nd day of May, A. D. 1870; the place the city of Alexandria, in the State of Missouri.

35

Article 18th.

In witness whereof the corporate seals of the respective companies parties to this agreement have been hereunto affixed in quadruplicate, by order and in the presence of the directors of each of said companies duly convened, a quorum of each of the said boards of directors being so present and assenting thereto, and is attested by their respective — hereto on behalf and by order of said boards of directors, and the presidents of each of said companies have also, at the same time and in behalf of the said respective companies, hereto affixed their names in virtue of resolutions of said several boards of directors passed at respective meetings thereof.

IOWA SOUTHERN RAILWAY
COMPANY
[SEAL.] By F. M. DRAKE, *President.*
Attest: C. W. BOWEN, *Secretary.*

F. M. DRAKE. C. H. HOWELL.
J. A. BREAZEALE. JOHN A. TALBOT.
WM. BRADLEY. JACOB RUMMEL.
S. DICKEY. C. W. BOWEN.
Directors of the Iowa Southern Railway Company.

ALEXANDRIA AND NEBRASKA
CITY RAILROAD COMPANY,
[SEAL.] By E. PRATT BUELL, *President.*
Attest: P. W. PLANTZ, *Secretary.*

E. PRATT BUELL. G. M. OCHILTREE.
E. HINKLEY. S. M. YOUNG.
P. W. PLANTZ.
Directors of the Alexandria & Nebraska City
Railroad Company.

36 I, C. W. Bowen, secretary of the Iowa Southern Railway Company, do hereby certify that, in pursuance of a notice published in the "Loyal Citizen," a newspaper published in the town of Centerville, Appanoose county, Iowa, principal office and place of business of said company; also in a newspaper published in the town of Bloomfield, in the county of Davis and State of Iowa, through which counties the line of said company is established and the road is to be run—

The stockholders of said company met at said company's office, in the town of Centerville aforesaid, on Saturday, the 23rd day of April, 1870, to take into consideration the within — foregoing agreement, and they then and there proceeded to vote by ballot for the adoption or rejection of said agreement.

That at the said meeting 8,755 votes were cast, each vote representing one share of stock; that all of the 8,755 votes so cast were cast in favor of said adoption of said agreement, and that none of said votes were cast against its adoption, and that the entire number of shares of said stock of said company is 10,280, and that therefore the stock so voted as aforesaid in favor of said agreement is more than four-fifths of the entire stock subscribed of the company.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of the said company, at Centerville, Iowa, this 23rd day of April, A. D. 1870.

C. W. BOWEN,
Secretary of the Iowa Southern Railway.

37 I, P. W. Plantz, secretary of the Alexandria and Nebraska City Railroad Company, do hereby certify that, in pursuance

of the notice published in the Alexandria Commercial, a newspaper printed and published in the city of Alexandria, Clarke county, in the State of Missouri, the principal office and place of business of said company being in said city of Alexandria, the stockholders of said company met at the Pearl Street House, in said city of Alexandria, on Monday, the 2nd day of May, 1870, to take into consideration the within and foregoing agreement, and they then and there proceeded to vote by ballot for the approval or disapproval of said agreement.

That at said meeting 4,873 votes were cast, each vote representing one share of stock; that — of the said 4,873 votes so cast were cast in favor of the approval and adoption of said agreement, and that none of said votes were cast against its adoption, and that the entire number of shares of stock of said — does not exceed 6,750, and that therefore the stock so voted as aforesaid in favor of said agreement is more than two-thirds of the entire stock of the company.

And I further certify that on the same day and immediately after the meeting had adjourned the board of directors of the Alexandria and Nebraska City Railroad Company met, as required by law, to carry the said vote and agreement into effect, and did adopt the name of the "Missouri, Iowa and Nebraska Railway Company," as the corporate name for the consolidated company, and did call in the certificates of stock outstanding in said Alexandria and Nebraska City Railroad Company, to be exchanged for stock in the said new company, by ordering and directing notice to be given to holders of said outstanding certificates of stock to present the same
38 to P. W. Plantz, the secretary of said Alexandria and Nebraska — Railroad Company, to be so exchanged on or before the first day of July, 1870.

In witness whereof I have hereunto affixed the seal of [SEAL.] the Alexandria and Nebraska City Railroad Company this third day of May, A. D. 1870.

P. W. PLANTZ,
Secretary of the Alexandria and Nebraska
City Railroad Company.

Defendant then offered in evidence the record of this court in the former case of Scotland County against The Missouri, Iowa and Nebraska Railway Company, commenced in this court against the said company about the April term, A. D. 1873, wherein the said county claimed certain taxes for the year 1872 to be due from said railway company, to show that the said circuit court found for defendant in that case and that the said judgment for the defendant was by the supreme court of Missouri affirmed.

And it is agreed that the agreed statement of facts as set forth in the statement and opinion of the said supreme court of Missouri in the said cause, found in 65th volume, commencing at page 123, of the Missouri Supreme Court Reports, contain all of the facts in said cause on which the said cause was tried and decided, and that the same may be considered by the supreme court of this State in the hearing of this cause when the same is reached for hearing without being copied in this transcript or bill of exceptions.

39 This was all of the evidence offered or received in this cause: wherefore the defendant prayed the court to declare the law to be as follows: The court upon the evidence and pleadings in this cause will find for the defendant.

Which instruction the court refused; to which refusal of the instruction then prayed the defendant, by its counsel, did then and there at the time except.

Whereupon the court took the cause under advisement and continued the same until the next February term, 1888, of said court; and now, in the circuit court of Scotland county, February, the sixth day of said month, being the first day of said term of court, this cause again coming on for further hearing before the court, the following proceedings were had:

The court of its own motion gave the following written opinion as his conclusion of the law in this case:

Opinion.

The K. & W. R. R. is the successor of M., I. & N. R. R., and owns real estate and road-bed in Scotland county. The M., I. & N. has never paid any taxes; wherefore for the taxes assessed against it for the year 1886 this suit has been instituted by the collector of this county.

In 1857 the Alexandria and Bloomfield Railway Company was chartered by an act of the Legislature. Its charter provided that the stock of the company should be exempt from taxation for a period of twenty years from the completion of the road. Thereafter the name of the company was changed to Alexandria and Nebraska City R. R. The Iowa Southern R. R. Company was a non-resident of the State and a creature of the laws of Iowa. That the
40 clause in the charter of the Alexandria & Bloomfield Company exempted the property of that road, if any existed, from taxation limited there is no question. It is equally clear that any property *in* might have thereafter acquired in conformity to its charter would have likewise been exempt. The Iowa Southern Company of course had no right of exemption from taxation in this State. In the year 1865 what is known in common parlance as the Drake constitution was adopted by the people of this State; it provided that all property, except such as was used by certain educational, religious, and public purposes, should be subject to taxation. This was in the year 1871, followed by appropriate legislation providing for a uniform assessment and collection of taxes against the railroads of this State.

In the year 1870 the A. & N. C. and the I. S. railroads consolidated under the provisions of an act passed by the Legislature and approved March 24, 1870. (See Wagner's Statutes, 1872, pages 314 and 315.)

Thus the M., I. & N. R. R. Company was formed. It may be safely presumed from the evidence that the A. & N. C. road never owned any part of the road-bed or other real estate sought to be here charged with taxes.

The articles of consolidation of the two companies, now before me, together with the proper certificates thereto attached, show that all the stock of the A. & N. C. Railroad Company was promptly called in, to be exchanged for stock in the new company, the M., I. & N.

The Supreme Court of the United States has repeatedly held that where one railroad which is exempt from taxation consolidates with another not exempt that the right of exemption can
41 only be passed to the new and consolidated company so as to
exempt that part of the road in the hands of the new company which was owned and controlled by the company and was exempt before the consolidation.

This is held to be the case, although the law under which the consolidations were made provided that the new company should have all the rights, privileges, and immunities of the old companies. (P. & W. R. R. Co. *vs.* Maryland, 10 Howard, 376; Tomlinson *vs.* Branch, 15 Wallace, 460; Delaware R. R. Co. tax case, 18 Wallace, 206; Central R. R. Co. *vs.* Georgia, 92 U. S., 665.)

In such cases the right of exemption from taxation will not be held to pass and vest in the consolidated company in favor of after-acquired property unless the intention of the Legislature is so plainly shown in the language of the law consenting to such a consolidation to be in favor of the proposition that the right of the State to tax the new road has been yielded up to the exclusion of every reasonable doubt. In case of Morgan *vs.* Louisiana, 93 U. S., at page 222, Judge Field says: "As has been often said by this court, the whole community is interested in retaining the power of taxation undiminished, and has the right to insist its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear."

Judge Waite says in Railroad Company *vs.* Commissioners, 103, U. S., at page 3: "Grants of immunity from taxation are never presumed. On the contrary, all presumptions are the other way, and unless an exemption is clearly established all property must bear its just share of taxation."

That court has always ruled with great strictness in favor
42 of the rights of the States to tax in such cases, and similar re-
marks could be quoted from it without number.

Therefore I hold that no right of exemption passed from the A. & N. C. road so as to benefit property which the M., I. & N. acquired thereafter in Scotland county. This view is supported by Wagner *vs.* Mety, 69th Mo., page 150. If the A. & N. C. road had been running through Scotland county before the consolidation the case might have been different; but that company never built a foot of road and never owned an inch of real estate in this county or elsewhere, so far as I am advised. But because the supreme court of this State in the Scotland county case, 65th Mo., page 123, decided against the county in an action for taxes an impression has prevailed that this company is not taxable; but the question decided by the Supreme Court of the United States in the first four cases I have cited do not appear to have been brought to the attention of the court in the Scotland county case.

The effect of the consolidation on after-acquired property is not mentioned in the decision, nor does the court say one word as to whether or not the Legislature of Missouri, in the act which permitted this consolidation, had consented for the right of taxation to pass to the new company; but the great jurist who wrote the opinion in that case does say that it was conceded there that the M., I. & N. Company succeeded to all the privileges of the A. & N. C. road. In view of this concession the court in that case could not have decided the case otherwise than against the county. The cause was being heard in a court that determined issues only on exceptions. Since the
exemption from taxation was a privilege of the A. & N. C.
43 road, and it was conceded that the M., I. & N. succeeded to all
the privileges of that road, as a matter of course it would succeed to the privilege of exemption of taxation.

No court could now take the position that the Legislature could have taken the right of exemption from taxation away from the A. & N. C. Company. The Constitution of the United States would forbid this. Now, the Legislature had the clear right to prescribe the terms on which railroad companies should consolidate. A proviso to the act under which this consolidation was made says that "if a railroad of another State shall lease a railroad the whole or part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its road into this State, then in such case such part of said railroad as is in this State shall be subject to taxation."

The Missouri supreme court in State *ex rel.* vs. C. B. & K. C. R. R. Co., 89 Mo., page 523, says this proviso above quoted applies to a purchase of a railroad in this State by a non-resident road under a foreclosure proceeding, and further says that it is broad enough to cover all those cases "where the company of another State is allowed to make arrangements for the operation of the road in this State, whether by lease, purchase, or otherwise." Since consolidation is provided for in the act, why not hold, then, that the proviso in reference to taxation will cover a case where a railroad of another State has consolidated with one in this State and built thereafter its railroad in this State? It may throw some light on this question to quote again from the opinion in the case last cited while in discussion of this act of the Legislature and this proviso. The court says: "The manifest policy was to get legislative control of all railroad
corporations."

44 This decision re-announces the doctrine, so well settled, that
exemption from taxation is a personal privilege to the corporation or person to whom it is given, incapable of transfer unless there is express statutory authority therefor. It says franchises are positive rights or privileges without which the road of the company could not be successfully worked, and that immunity from taxation is not one of them. A Federal question is present in this case, because it is insisted that the laws of this State passed subsequent to the charter of the A. & N. C. road, in 1857, making all railroad prop-

erty taxable, are unconstitutional so far as this defendant is concerned. It would be the duty of this court to follow the U. S. Supreme Court. Therefore in passing on such questions I think the rulings of that court are clearly in favor of the county of Scotland to collect this tax.

Furthermore, I think the case of Wagner *vs.* Mety and State *vs.* C. B. & K. C. R. R. Co., by implication, overrule the Scotland county case.

Cooley on Taxation, page 146, says: "The intention to exempt must in any case be expressed in clear and unambiguous terms. All exemptions are to be clearly construed. They embrace only what is in these terms, subjecting the act of consolidation in question to this test, and in the light of the case in the eighty-ninth Missouri report I am of the opinion that the judgment should be for the plaintiff.

To the giving of which and to each and every part thereof the defendant excepted at the time.

45 Under the law as found and declared by the court, the court found for the plaintiff.

And on the 9th day of February, A. D. 1888, within four days after the finding of the court, the defendant filed its motion for a new trial as follows, to wit:

STATE OF MISSOURI, } *ss:*
County of Scotland, }

In the Circuit Court of Scotland County. February Term, 1888.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Now comes the said defendant and moves the court to set aside the findings of the court and judgment in the above-entitled cause and grant the defendant herein a new trial for the reasons—

1. The findings of the court and judgment should have been for the defendant instead of the plaintiff.

2. Upon the pleadings and evidence the findings and judgment of the court should have been for the defendant.

3. The findings of the court *is* against the evidence presented at the trial.

4. The finding of the court is against the law and the evidence.

4. Because the court erred in refusing to give the instruction number one.

46 5. Because the court erred in his conclusion of law as set forth in his written opinion filed in the cause.

6. Because upon the pleadings in the cause the finding of the court should have been for the defendant instead of the plaintiff.

7. Because the court erred in holding that the effect of the con-

solidation of the Alexandria and Nebraska City Railroad Company with the Iowa Southern Railway Company was to create a new company by the name of the Missouri, Iowa and Nebraska Railway Company, and that said new company did not receive and obtain by said consolidation the exemption from taxation contained in the Alexandria & Bloomfield Railroad Company, as claimed in defendant's answer.

8. Because the court erred in holding that the Missouri, Iowa and Nebraska Railway Company did not by the consolidation aforesaid succeed to and become vested with all the rights — privileges contained in the said charter of the Alexandria and Bloomfield Railroad Company, and was exempt from taxation.

9. That the act of the Legislature under which the plaintiff asks to tax the property in controversy is unconstitutional, in this, that it impairs the obligation of the contract of the State with the said Alexandria & Bloomfield Railroad Company as to the rights, privileges, and exemptions to which defendant succeeded by the consolidation, within the meaning of section 10, article 1, of the Constitution of the United States.

10. Because upon the pleadings and evidence in the case the question at issue were all tried in the case of Scotland County *vs.* The Missouri, Iowa and Nebraska Railway Company, as claimed in defendant's answer, and are and have been ever since *res adjudicata.*

11. Because to hold the property of said Missouri, Iowa and Nebraska Railway Company liable for taxes sued for in the
47 hands of defendant impairs the obligation of contracts between the State of Missouri and this defendant within the meaning of the said section and article of the Constitution of the United States.

12. Because the pleadings admit that defendant purchased the property for value under the decree of foreclosure set out in the answer, relying on the fact that it was not liable for the taxes aforesaid, and to now hold the property so liable impairs the obligation of contract between the defendant and the State of Missouri within the meaning of the said article and section of the Constitution of the United States.

F. T. HUGHES &
R. D. CRAMER,
Att'ys for Defendant.

Which said motion the court, on the 15th day of February, A. D. 1888, overruled; to which ruling and order of the court the defendant then and there at the time excepted.

It therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed, sealed, and made part of the record; which is done this 20th day of, February, A. D. 1888.

BEN. E. TURNER,
Judge Circuit Court.

[SEAL.]

Filed Feb. 20, 1888.

C. F. SANDERS,
Clerk Cir. Court.

And afterwards, on February 15, 1888, the following, among other, proceedings were had in said cause, to wit:

48 STATE OF MISSOURI *ex Rel.* W. H. WINE, Collector of Scotland County, Missouri, Plaintiff,
against
KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Now, at this day, comes the defendant, by its attorney, and files the affidavit of ——— ——— for an appeal in this cause, and an appeal — granted by the court to the supreme court of Missouri, and leave granted defendant to file its appeal bond in the sum of four thousand dollars within ten days from the adjournment of court.

Which affidavit is in words and figures following, to wit:

STATE OF MISSOURI,
County of Scotland, } *ss:*

In the Circuit Court. February Term, A. D. 1888.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue of Scotland County, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY Defendant.

F. T. Hughes, of lawful age, being duly sworn, upon his oath says that he is president and agent of the defendant railroad company in the above-entitled cause; that he knows the facts, and 49 that the appeal prayed for by the defendant is not made for *tax*ation or delay, but because affiant believes that the appellant is aggrieved by the judgment and decision of the court.

F. T. HUGHES.

Subscribed and sworn to before me this Feb'y 15, 1888.

JAS. P. NESBIT, *Co. Cl'k.*

And afterwards, on February 20, 1888, the following further proceedings were had in said cause, to wit:

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff,
against
KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Now comes the defendant, by its attorney, and presents to the court its bill of exceptions, which is examined by the court and signed and sealed by the judge thereof and ordered filed and made a part of the record in this cause.

And afterwards, on February 21, 1888, the following further proceedings were had in said cause, to wit:

STATE *ex Rel.* WILLIAM H. WINE, Collector of Scotland County, Missouri, Plaintiff,
against
KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

50 Now comes defendant and files its bond in appeal in the sum of four thousand dollars, which bond is seen and examined by the court and by the court approved.

Which bond is in words and figures following, to wit:

Bond in Appeal to Supreme Court in a Civil Case.

In the Circuit Court, Scotland County, State of Mo.

STATE OF MISSOURI at the Relation of and to the Use of W. H. WINE, Collector of the Revenue of Scotland County, Plaintiff, Respondent,
vs.
THE KEOKUK & WESTERN RAILROAD COMPANY, Defendant, Appellant.

Appellant's bond.

Know all men by these presents that we, The Keokuk & Western Railroad Company, as principal, and M. K. Jessup and J. R. Combs, as securities, are held and firmly bound unto the State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland county, in the sum of four thousand dollars; for the payment of which we hereby bind ourselves and our heirs, executors, and administrators.

Upon the following condition, however: That whereas the State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland county, has, in the circuit court, Scotland county and State aforesaid, in a certain cause therein pending entitled State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland county, against The
51 Keokuk and Western Railroad Company, recovered a judgment against the said Keokuk and Western Railroad Company; and whereas the above-named appellant has, according to law, been granted an appeal to the supreme court of the State of Missouri in said cause:

Now, therefore, if the said The Keokuk and Western Railroad Company shall prosecute its appeal with due diligence to a decision in said supreme court and shall perform such judgment as shall be given by the said supreme court in the premises and such a judgment as the said supreme court shall direct the circuit court of Scotland county aforesaid to give, and in case the judgment first aforesaid of the last-named court or any part thereof shall by said supreme court be affirmed, if then the said appellant shall comply with and perform the same so far as it may be affirmed and pay all damages and costs which may be awarded against the said appellant by the said supreme court, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this 20th day of February, 1888.

KEOKUK AND WESTERN RAILROAD COMPANY,
By F. T. HUGHES, *President.* [SEAL.]
MORRIS K. JESSUP, [SEAL.]
By F. T. HUGHES, *His Attorney.* [SEAL.]
C. R. COMBS. [SEAL.]

Approved by me—
—— ——,
Judge of the ——.

52 STATE OF MISSOURI *ex Rel.* W. H. WINE, Collector, Plaintiff,
vs.
KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

The following costs have accrued in above-entitled cause, to wit:

Bill of Costs.

Solomon Allen, sheriff, serving one summons	$1	00
C. F. Sanders, clerk circuit court, Aug. term, 1887:		
Two filings, 10c.; summons, $1.00	1	10
Copy of summons, 10c.; copy of petition, $1.00	1	10
3 cert. and seals, $1.50; docket and index, 25c.	1	75
2 motions, 40c.; rule, 20c.; 5 orders, $1.00	1	60
Submission, 35c.; continuance, 25c.		60
Feb. term, 1888: Docket & index, 25c.; appr., 10c.		35
2 orders, 40c.; entering judgment, 50c.		90
Docketing judgment, 15c.		15
This transcript, 8,100 words, 15c. per 100	12	15
Certificate to same		50
Total costs	$21	20

Attest:

C. F. SANDERS,
Clerk Circuit Court,
Per CHAS. L. MOORE, *Deputy.*

53 STATE OF MISSOURI,
County of Scotland, } *ss:*

I, C. F. Sanders, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the papers filed and of the proceedings had in the cause of The State of Missouri at the relation of and to the use of William H. Wine, collector of the revenue of Scotland county, Missouri, plaintiff, *versus* The Keokuk and Western Railroad Company, defendant, as called for by defendant's bill of exceptions allowed and filed in said cause, as the same appear of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of said county. Done at office, in Memphis, Missouri, this March 29th, 1888.

[SEAL.]

C. F. SANDERS,
Clerk Circuit Court.
Per CHAS. L. MOORE,
Deputy Clerk Circuit Court.

54 In the Supreme Court of Missouri. October Term, 1888.

Be it remembered that heretofore, to wit, on the 4th day of March, A. D. 1889, the following further proceedings were had in said cause, to wit:

STATE *ex Rel.* WINN, Coll., Respondent,
vs.
KEOKUK AND WESTERN R. R., Appellant.

Comes now the said respondent, by attorney, and files his motion to advance this cause on the docket.

Which said motion is in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri.

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINN, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff, Respondent,
vs.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant, Appellant.

No. 4332.

Appeal from Scotland county.

Now at this day comes the relator, respondent herein, by his attorney, and moves the court to advance this cause on its docket and set the same for hearing at the April term of this court, 1889; and for cause assigns the following:

1st. This suit is for taxes due the State of Missouri, the county of Scotland—the school fund of said county and the city of
55 Memphis, Missouri, which taxes are necessary to the administration of law.

2nd. Delay in the hearing of this cause may, by reason of the statute of limitations, occasion the loss of a large amount of taxes to the State and to said county and city and school fund, as also to the counties of Clark and Schuyler and certain cities therein and to the school funds of said counties, which are equally interested in the result of this suit.

3rd. A speedy determination of this cause will prevent much litigation.

4th. By reason of the limitation upon the power of taxation the counties aforesaid are greatly interested in a speedy adjudication of the issues involved in this cause.

JOHN C. MOORE,
JOHN M. WOOD,
Attorneys for Respondent.

In the Supreme Court of Missouri. October Term, 1889.

Be it remembered that heretofore, to wit, on the 23d day of March, A. D. 1889, the following further proceedings were had in said cause, to wit:

STATE *ex Rel.* WINE, Coll., etc., Resp.,
vs.
KEOKUK AND W. R. R. Co., App.

* * * * * * *

Now, at this day, the court, having fully considered and understood the motions heretofore filed to advance these causes on the docket, doth order that said motions be sustained and these causes set for hearing on the third day of the next term of this court.

56 In the Supreme Court of Missouri. April Term, 1889.

Be it remembered that heretofore, to wit, on the 17th day of April, A. D. 1889, the following further proceedings were had in said cause, to wit:

STATE *ex Rel.* Coll., etc., Resp.,
vs.
KEOKUK & WESTERN R. R. Co., App.

Come now the said parties, by attorneys, and, on stipulations herein filed, it is ordered by the court that the record be perfected and extension of time granted for service of briefs in accordance therewith, and that this cause be set for hearing on the 20th day of May, 1889.

Which said stipulations are in words and figures as follows, to wit:

In the Supreme Court of Missouri. April Term, A. D. 1889.

THE STATE OF MISSOURI *ex Rel.* WM. H. WINE, Respondent,
against
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.
No. 4699.

Now comes respective parties, by counsel, and agree that the bill of exceptions referred to in original transcript on file herein, at page 46 of said Transcript, is the same as contained in said Transcript between pages 20 and 44 of said Transcript.

F. T. HUGHES,
Attorney for Appellant.
JOHN C. MOORE,
Attorney for Respondent.

57 In the Supreme Court of Missouri. April Term, A. D. 1889.

THE STATE OF MISSOURI *ex Rel.* WILLIAM H. WINE, Respondent,
against
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Now comes respective parties, by counsel, and because this cause has been advanced on the docket out of its regular order, so that there were not thirty days intervening between the 23d day of March, 1889, when order advancing cause was made, and April 18th, when case was ordered to be set for hearing, and therefore agree that appellant shall furnish respondent's counsel, John C. Moore, copy of abstract and brief on or before April 6th next, respondent to serve his brief and further abstract, if any, on or before the 12th thereafter, and appellant to reply, if he deems necessary, on or before the 15th, same month; this stipulation to be carried out as near as counsel can do so.

F. T. HUGHES,
For Appellant.
JOHN C. MOORE,
— Respondent.

In the Supreme Court of Missouri. April Term, 1889.

Be it remembered that heretofore, to wit, on the 18th day of April, A. D. 1889, the following further proceedings were had in said cause, to wit:

58 STATE *ex Rel.* W. H. WINE, Coll., Resp.,
v.
KEOKUK AND WESTERN R. R. Co., App.

Comes now the said appellant, by attorney, and suggests a diminution of the record herein, and files its motion setting forth the same and asking that a rule of this court issue to the clerk of Scotland county circuit court, commanding him to send up to this court a perfect transcript of the record and proceedings of said circuit court in this cause. Comes also the said respondent, by attorney, and files his suggestions in opposition to the issuance of said writ.

Which said motion and suggestions in opposition thereto are as follows:

In the Supreme Court of Missouri. April Term, 1889.

STATE *ex Rel.* W. H. WINE, Collector, &c., Repondent,
vs.
KEOKUK & WESTERN R'Y Co., Appellant.

Now comes the appellant in the above cause and suggests to this honorable cou rtthat the transcript of the record herein is deficient, in that it fails to show, save by the recitals of the bill of exceptions, the filing and overruling of the motion for new trial; that said transcript is otherwise deficient and imperfect; that matters of record proper and of exception are confusedly intermingled throughout the transcript.

Wherefore appellant prays for a writ of certiorari, &c.

F. T. HUGHES &
H. S. PRIEST,
Att'ys for Appellant.

59

STATE OF MISSOURI, }
City of Jefferson, } *ss:*

H. S. Priest, being sworn, upon his oath says the facts stated in this application are true to the best of his knowledge and belief.

H. S. PRIEST.

Subscribed and sworn to before me this 18th day of April, A. D. 1889.

[SEAL.]

H. W. EWING, *Clerk,*
By ROWAN RAY, *D. C.*

In the Supreme Court of Missouri. April Term, A. D. 1889.

STATE OF MISSOURI *ex Rel.* WM. H. WINE, Respondent,
vs.
KEOKUK & WESTERN RAILROAD COMPANY, Appellant.

Appeal from Scotland circuit court.

To John C. Moore, Esq., attorney for respondent:

Take notice that I shall, on the 1st day of the next term of the supreme court, beginning on the 16th of April, 1889, move the court in the above cause for a writ of certiorari upon the clerk of the Scotland circuit court to send up a complete and perfect transcript of his record in the above cause on account of certain defects and irregularities in the one now on file with the clerk of the said supreme court.

When and where you may attend in you desire.

F. T. HUGHES,
Attorney for Appellant.

60

MEMPHIS, MO., *April* 8, 1889.

Received copy of this notice.

JOHN C. MOORE,
Attorney for Respondent.

In the Supreme Court of Missouri. April Term, 1889.

STATE *ex Rel.* W. H. WINE, Respondent,
vs.
KEOKUK AND WESTERN R'Y CO., Appellant.

Now, at this day, comes respondent and objects to application for writ of certiorari filed by appellant herein and for cause assigns the following:

1st. Because respondent has not been notified of the filing of this application.

2d. Because said application is not verified as required by the rules of court.

3d. Because the only errors in the record specifically enumerated in the application do not appear, as will be seen by reference to pages 41 & 43 of Record.

J. C. MOORE &
J. M. WOOD,
For Respondent.

In the Supreme Court of Missouri. April Term, 1889.

Be it remembered that heretofore, to wit, on the 20th day of April, A. D. 1889, the following further proceedings were had in said cause, to wit:

61 STATE *ex Rel.* W. H. WINE, Coll., &c., Resp.,
v.
KEOKUK & WESTERN R. R. Co., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed for a writ of certiorari herein, doth order that said rule issue as prayed, returnable on the 10th day of May, 1889, and that this cause be set for hearing on the 20th day of May, 1889.

And afterwards, to wit, on the 3d day of May, A. D. 1889, there was filed in the office of the clerk of the supreme court of the State of Missouri a return to said writ of certiorari, which is in the words and figures as follows, to wit:

STATE OF MISSOURI, *sct:*

The State of Missouri to the clerk of the circuit court of Scotland county, Greeting:

Whereas it hath been suggested to our supreme court of the State of Missouri that the transcript of the record and proceedings in a certain cause lately pending in the circuit court of Scotland county, wherein State of Mo. *ex rel.* W. H. Wine, coll., etc., is plaintiff and The Keokuk & Western Railroad Co. is defendant, and which said cause was brought into our said supreme court on appeal, is imperfect, insufficient, and diminished; and whereas our said supreme court is satisfied that the said record does not contain a full, true, and complete transcript of the proceedings had in said circuit court of Scotland county, in that it fails to show, save by the recitals of the bill of exceptions, the filing and overruling of 62 the motion for new trial, and that matters of record proper and of exception are confusedly intermingled throughout the transcript:

These are, therefore, to command you, as before you were commanded, that you send up to our said supreme court, on or before the tenth day of May next, a full, true, and complete transcript of said proceedings, certified under the seal of said circuit court of Scotland county, so that our said supreme court may proceed to do justice herein between the parties; and have you then and there this writ.

[SEAL.] Witness Henry W. Ewing, clerk of the supreme court of Missouri, with the seal of said court hereunto affixed.

Done at office, in the city of Jefferson, State aforesaid, this 22d day of April, A. D. 1889.

HENRY W. EWING, *Clerk*,
By ROWAN RAY, *D. C.*

STATE OF MISSOURI, } *ss:*
County of Scotland, }

To the supreme court of the State of Missouri:

I, C. F. Sanders, clerk of the circuit court in and for the county and State aforesaid, in obedience to the attached writ of certiorari, commanding me as such clerk to send up to said supreme court, on or before the tenth day of May, 1889, a full, true, and complete transcript of the record and proceedings as the same appear of record and on file in my office in the cause of The State of Missouri at the relation and to the use of William H. Wine, collector of the revenue within and for the county of Scotland and State of 63 Missouri, plaintiff, against The Keokuk and Western Railroad Company, defendant, I have attached the following pages as such record and proceedings and now submit the same in obedience to said writ.

[SEAL.] In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court.

Done at office, in Memphis, Missouri, this first day of May, 1889.

C. F. SANDERS,
Clerk Circuit Court,
Per CHAS. L. MOORE,
Deputy Clerk Circuit Court.

Transcript.

Pleas and proceedings had in the Scotland county circuit court in the matter of The State of Missouri at the relation and to the use of William H. Wine, collector of the revenue within and for Scotland county, Missouri, plaintiff, against Keokuk and Western Railway Company, defendant, said court composed of the following officers, viz: Hon. Ben. E. Turner, judge of the fourth judicial circuit of the State of Missouri; John B. Mudd, Esq., prosecuting attorney for Scotland county; Solomon Allen, sheriff of Scotland, and C. F. Sanders, clerk of said Scotland county circuit court.

Be it remembered that on the fourth day of August, 1887, there was filed with the clerk of the circuit court within and for 64 said Scotland county, Missouri, the amended petition of plaintiff in the above-named cause; which said petition is in words and figures as follows:

STATE OF MISSOURI, }
County of Scotland. } *ss:*

Amended Petition.

In the Circuit Court. August Term, 1887.

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue of Scotland County, Plaintiff,

against

THE KEOKUK AND WESTERN RAILWAY COMPANY, a Railroad Corporation, Defendant.

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Scotland county, alleges that William H. Wine is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law, and is the owner and was the owner, on or about the 31st day of December, 1886, and had control of the following railroad property in said county, to wit: Twenty-two and one-half miles of road-bed and superstruction, with right of way, rolling stock, water tanks, engines, cars, depots and other buildings; the north half of lot nine (9), in Oak Ridge Addition to the city of Memphis, in said county, and lots seven (7) & eight (8), in block five (5), in the town of Granger, in said county, which was then and there and had for more than fifteen years before been subject to taxation for State, county, school, municipal, and other purposes; that there was legally assessed and levied against such property for the year ending August 1st,
65 1886, for State, county, school, municipal, and other purposes
the aggregate sum of fourteen hundred and ninety-two dollars ($1,492) and seven (7) cents.

That said assessment and levy were made while said property was in the hands and under the control of the Missouri, Iowa and Nebraska Railway Company, a corporation existing according to law, and that defendant, after said levy and before the filing of this suit, became the purchaser and owner of said property and took control of same, subject to the lien of said taxes, and assumed the liability to pay the same.

That of the taxes so assessed and levied there is now due and unpaid for State purposes the sum of four hundred and three dollars, for county purposes the sum of six hundred and four and $\frac{59}{100}$ dollars, for school purposes in said county the sum of four hundred and sixty-three and $\frac{45}{100}$ dollars, and for city, town, and other municipal purposes the sum of twenty-one and $\frac{13}{100}$ dollars, amounting in the aggregate to the sum of fourteen hundred and ninety-two and $\frac{7}{100}$ dollars, all which is evidenced by a back tax bill in the name of the Missouri, Iowa, and Nebraska Railway Company, herewith filed as against defendant, because of being the purchaser of said property after said assessment and levy, which sum the defendant has failed to pay as required by law; that plaintiff is entitled to recover of defendant at the rate of one per centum each month from the 1st day of January, 1887, until the same shall be paid.

Plaintiff further says that the tax so assessed and levied *are*, by virtue of the laws of this State, a prior lien on said road-bed
66 and real estate and other property, and defendant purchased same subject to such lien.

Wherefore plaintiff prays judgment for the said sum of fourteen hundred and ninety-two and $\frac{7}{100}$ dollars and the penalties thereon until the same shall be paid, and for a reasonable attorney's fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and a special *fieri facias* be issued thereon against said property.

WILLIAM H. WINE, *Collector,*
By JOHN C. MOORE, MYERS & MOORE,
Attorneys Employed by W. H. Wine, Coll., by Consent of Scotland County Court.

And afterwards, on August 5th, 1887, defendant filed its answer to said amended petition; which answer is in words and figures following, to wit:

STATE OF MISSOURI,
County of Scotland. }

In the Circuit Court of Scotland County, Missouri. August Term, 1887.

STATE OF MISSOURI at the Relation and to the Use of W. H. WINE, Collector of the Revenue of Scotland County, Plaintiff,
against
THE KEOKUK & WESTERN RAILWAY CO., Defendant.

67 Now comes the defendant and, for answer to plaintiff's amended petition herein, states that on or about October 22d, 1880, and on supplemental proceedings thereto, on July 8th, 1886, decrees of foreclosure were entered in the circuit court of the United States for the southern district of Iowa, eastern division, at Keokuk, foreclosing a mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated June 1st, 1870, to the Farmers' Loan & Trust Company of New York, trustees, to secure certain bonds in said mortgage described; that said foreclosure decrees were entered in the cause, in the said United States circuit court pending, entitled The Farmers' Loan & Trust Company against The Missouri, Iowa and Nebraska Railway Company and others; that thereafter, on the 19th day of August, 1886, in pursuance of said decree, all the said railway property and franchises of the said Missouri, Iowa & Nebraska Railway Company were sold in the city of Keokuk and said State

of Iowa to Morris K. Jessup and Henry C. Thacher by P. T. Lomax, Esq., master in chancery in said court and special commissioner to make said sale; that the said sale, on or about the 21st day of September, was duly confirmed by said United States court, and that thereafter, the said Morris K. Jessup and Henry C. Thracher having paid the purchase price as bid, the said master was by said court ordered and directed to convey to said Jessup and Thacher the property, premises, and franchises of the said railway aforesaid, in pursuance of which thereafter the said Lomax, as such master, did by deed duly convey said railway property, premises, and franchises in the States of Iowa and Missouri, including the railway and property in plaintiff's petition herein described. Thereafter the said Jessup and
Thacher, on good and sufficient consideration, conveyed the
68 premises, property, and franchises to The Keokuk & Western
Railway Company, the defendant herein; that in pursuance of — said Keokuk & Western Railroad Company, on or about the 3d day of December, 1886, entered into possession of said railway property and franchises, and have been since and are still owning, using, and operating said property free from any liability or obligation to said Missouri, Iowa & Nebraska R'y.

Defendant, for further answer, states that by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Alexandria & Bloomfield Railroad Company," approved February 9th, 1857, the Alexandria & Bloomfield Railroad Company became and was duly incorporated, possessed of all the power, privileges, rights, immunities, exemptions, franchises, and properties and subject to all liabilities, obligations, and restrictions mentioned in said act.

That on or about the 13th day of September, A. D. 1864, said company was duly organized and directors elected, as required by section 4 of said act, and immediately said company commenced and proceeded to carry out its proper business and railroad operations under the provisions and conditions in said act mentioned.

That by an act of the said General Assembly entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company," approved February 9th, 1857, which amendatory act was approved February 19th, 1866, and by the due acceptance of the first section of said amendatory act the corporate name of said railroad company was changed to that of the
Alexandria & Nebraska City railroad.

69 That in pursuance of the general laws of the States of Missouri and Iowa authorizing the consolidation of railroad companies owning connecting railroad lines in said States the said Alexandria & Nebraska City Railroad Company, on the 3rd day of May, A. D. 1879, duly and legally consolidated with the Iowa Southern Railway Company, a railroad company duly incorporated, organized, and existing under the laws of the State of Iowa, and that thereafter the said Alexandria and Nebraska City Railroad Company and the said Iowa Southern Railway Company became merged and consolidated into and formed one company under the corporate name of Missouri, Iowa & Nebraska Railway Company, the defendant herein.

This defendant further states that the said Missouri, Iowa & Nebraska Railway Company by such consolidation succeeded to and became vested with all the rights, franchises, privileges and immunities, property and exemptions, belonging to or in anywise appertaining to the, said Alexandria & Bloomfield Railroad Company, and that section 9 of the said Alexandria & Bloomfield Railroad Company is as follows:

"The stock of said company shall be exempt from taxation for the period of twenty years after its completion."

Said railway was completed about December 31st, 1872, wherefore defendant avers said period of twenty years has not yet elapsed.

That by reason of the exemption from taxation in said charter and the facts herein stated this defendant is advised and believes and so avers and charges that the property described in the petition herein is not nor can it be made liable for the taxes, interest, and
penalties claimed in said petition nor for any part of the
70 same, and that therefore defendant is not legally bound to
pay same nor any part thereof; all of which it pleads in bar of any recovery herein.

Defendant, further answering, states that at the April term, A. D. 1873, of the circuit court of said Scotland county, Missouri, plaintiff herein brought suit against the said Missouri, Iowa & Nebraska Railway Company, as defendant, to recover certain State, county, and municipal taxes alleged to be due and payable for the year 1872 on the railway property described in the petition herein; that to said suit the said Missouri, Iowa & Nebraska Railway Company appeared and made answer, alleging, among other things, that the said railway company was not liable to pay said taxes nor any part thereof by reason of the exemption contained in said section 9 of the said Alexandria & Bloomfield railroad charter, and thereafter such proceedings were had in said cause in said court that the said court sustained the said answer and rendered final judgment in favor of said railroad company, the said circuit court holding and deciding that the said section 9 of the said Alexandria & Bloomfield railroad charter did exempt the property of the said Missouri, Iowa & Nebraska Railway Company, described in the petition herein, from all taxes, whether State, county, municipal, or otherwise, for the period of 20 years after completion of said railway; that thereafter such proceedings were had in said cause that on appeal to the supreme court of Missouri the judgment of the said Scotland county circuit court was in all things affirmed.

The report of said cause is found in the 65th volume, at page 123,
of the Missouri Supreme Court Reports, the record of which
71 cause defendant is ready and willing to produce when and
where this honorable court shall direct; that thereafter, in the year 1881, James Secor and others, stockholders of the said Missouri, Iowa & Nebraska Railway Company, filed a bill in the circuit court of the United States for the eastern district of Missouri praying an injunction against the said Missouri, Iowa & Nebraska Railway Company from paying certain taxes alleged to be due upon the said railway property in said Scotland county, and also Clarke and

Schuyler counties, in said State, and also to enjoin the county court, the judges thereof, and the collectors of revenue of said counties from collecting any taxes levied upon said railway property in said counties of Clarke, Scotland, and Schuyler for the year 1881, or any previous years, and that thereafter such proceedings were had in said court in said cause. that a temporary injunction was granted, which on the hearing of the merits thereof was made final and perpetual, which injunction remains unreversed and in full force and effect, and is reported in 9th Federal Reporter, page 809. In this suit the complainant charged that the said property of the defendant railway company was not liable to pay said taxes, or any part thereof, by reason of the exemption contained in said Alexandria & Bloomfield railroad charter, and the said circuit court so held in granting said final injunction.

And defendant avers and charges that by reason of the judgments rendered as aforesaid in the said supreme court of Missouri and of the said circuit court of the United States the matters and things set forth in the petition herein have been and are fully adjudicated and determined between the said plaintiff and the 72 Missouri, Iowa & Nebraska Railway Company, and the said plaintiff is now estopped from further litigating any of said matters in said petition, all of which your defendant pleads in bar of any recovery herein.

Defendant purchased and acquired said railway property relying upon the fact that said property was not liable for any part of said taxes. Defendant denies each and every other allegation in said petition contained. Having fully answered, defendant prays to be discharged with its costs.

F. T. HUGHES & R. D. CRAMER.
Att'ys for Defendant.

And afterwards, on the same day, to wit, August 5th, 1887, plaintiff filed his reply to said answer, which reply is in words and figures as follows, to wit:

STATE OF MISSOURI, } *ss:*
County of Scotland, }

In the Circuit Court of Scotland County, Missouri. August Term, 1887.

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector, Plaintiff,
vs.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Reply.

Plaintiff, for reply to defendant's answer, alleges that full and complete foreclosure of the mortgage given by the Missouri, Iowa and Nebraska Railroad Company (hereinafter called the M., I. &

N. for convenience) to the said Farmers' Loan and Trust
73 Company was made on or about the 22d day of October,
1880, but that prior thereto, to wit, on or about the 3d day of September, 1880, the M., I. & N. and a committee of M., I. & N. bondholders sold and conveyed said property to the Wabash, St. Louis and Pacific Railroad Company, a corporation existing according to law, and delivered possession of the property to the last-named corporation, but that said sale was designated as a lease for the period of ninety-nine years; that the execution issued on such judgment was stayed by agreement among the parties and the Wabash, St. Louis and Pacific Company undertook to pay off the debt, and would have done so but for becoming insolvent in 1884, but that said Wabash took control*l* and operated said property as their own, and that any exemption which the M., I. & N. might have enjoyed prior thereto was thereby surrendered; that defendant's grantor, the holders of the bonds of such grantor, the Farmers' Loan & Trust Company and said Wabash Company, were the parties to such sale and delivery and stay of execution, and the same was done without plaintiff's knowledge or consent; that said supplementary proceedings was not instituted until it was discovered that said Wabash Company was insolvent and unable to discharge the debt secured by said trust deed, and that the several parties, by surrendering up their Wabash stock, which had been issued in lieu of M., I. & N. stock, procured a decree to have the property sold on an execution issued under the old decree, and defendant became the purchaser and subject to pay the taxes accumulated after liability attached under Wabash control, if not before. Plaintiff admits that a charter
was granted to the Alexandria and Bloomfield Railroad Com-
74 pany at the time stated, and that the name was changed as
stated, and that the consolidation was made as stated with the Iowa Southern, and that thus arose the M., I. & N., but denies that said M., I. & N. succeeded to all the rights, franchises, privileges, immunities, property, and exemptions of said Alexandria & Bloomfield Company.

Plaintiff admits that said last-named company had a charter, the 9th section of which was in the words quoted, and alleges that the eleventh section of said charter required said road to commence construction within ten years from the date of the charter and to complete the same within ten years thereafter, which was not done, and that the completion of said road Dec. 31st, 1883, as alleged in defendant's answer, is more than twenty-six years after the date of said charter.

Plaintiff denies that the matters now at issue were adjudicated as alleged in said answer, and avers that the facts now presented to this court are for the first time presented for adjudication, and denies that he is estopped from pleading these facts.

Plaintiff further states that in February, 1866, when the said name was changed as alleged, the route was also changed, making the whole line of road in this State, and the intermediate and terminal points were changed and new franchises and privileges were granted by the Legislature, but that the exempting clause was not re-enacted, and plaintiff avers that the new act thus obtained by said company constituted a new contract, which the Alexandria & Bloomfield Company accepted and thus surrendered the privileges of exemption if it ever existed.

Plaintiff further states that at the time said charter was
75 granted that section 7 of chapter 34 of the Revised Statutes
of Missouri for the year 1855 was in force as the general law
governing all corporations of every kind, and is as follows:

"Sec. 7. The charter of every corporation, that shall hereafter be granted by the Legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature."

That the Legislature, on the 27th day of February, 1875, by an act entitled "An act to repeal the section nine of an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February the ninth, A. D. 1857, and to subject the stock of said railroad company to taxation," among other things enacted the following:

"Section 1. The ninth section of the act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, A. D. 1857, is hereby repealed.

Section 2. All the property of the Missouri, Iowa and Nebraska Railway Company, whether real, personal or mixed, and the stock of said company, shall hereafter be subject to taxation, for all the purposes for which other property in this State is liable to be taxed.

Section 3. All the laws now in force, for assessing and collecting taxes on railroads, shall apply and be in force as to the Missouri, Iowa and Nebraska Railway Company, and its officers, with like force and effect as other railroads in this State."

Plaintiff further avers that the language of said exemption cannot
be made to apply to taxes due to Scotland county, nor to the city of
Memphis, for the reason that it does not purport to be a con-
76 tract with said county or city. Plaintiff further avers that
said charter was not a contract made with the State of Mis-
souri, and that there was not any consideration given from said
company to the State, but that such as it was, it was but a mere act
of gratuity, and enjoined the performance of duties which said com-
pany never complied with.'

That the Legislature of Missouri never had the authority to grant immunity from taxation, such grant being in violation of section 19 of article 13 of the constitution of Missouri, in force when said charter was granted.

That the said M., I. & N. R'y Company, in 1869 or 1870, sent its officers, agents, and servants into the county of Scotland for the purpose of securing a subscription of two hundred thousand dollars from said county in aid of the construction of said road, and that the president of said road and other officers and servants stated that the charter of said road granted to said company immunity from taxation. They made many speeches to the people in different places, and said officers, servants, and agents promised the people of said county that although they were exempt, yet, if they would sign petitions to the county court asking that such subscription be made,

that they would agree that the said company would pay all taxes
that might be levied against the property of said company in the
county, and the president of said road, one F. M. Drake, did, in a
public speech, say that the said company would waive its right of
exemption if the county court would grant the bonds in aid of said
road, and he, the said Drake, did say to the county court of said
county that if they would issue the bonds of said county in the sum
of two hundred thousand dollars that the railroad company
77 would waive any right of exemption from taxation which it
might have, and he, the said Drake, did give to one Marion
Cowell a written statement to that effect to show to the people of
said county, whereby the people of said county were induced to sign
and did sign petitions to the county court asking the issue of the
county bonds in that amount; that the said Drake, by making such
statements, induced the county court to issue, and they did issue, the
bonds of said county in that sum to aid in such construction, and
did deliver the same to said company.

That the people of said county would not have signed such petitions nor the county court issued such bonds but for the statement and agreement of said officers, agents, and servants, and particularly said Drake, the president of said company; that therefore said company and defendant, the owner of said property, are estopped to deny their liability to taxation.

Plaintiff further states that immunity from taxation is a personal privilege, which, if it ever existed in the M., I. & N., would not be transferred to defendant, and that any exemption of the M., I. & N. could not be pleaded by defendant, but must be done by said M., I. & N.

That it is the duty of defendant to pay the taxes so assessed and to recover the same from its grantor.

WILLIAM H. WINE,
By JOHN C. MOORE,
MYERS & MOORE,
Attorneys Employed by William H. Wine, Collector,
by Consent and Agreement of the County Court.

78 And afterwards, said cause coming on for final hearing, the court rendered judgment as follows, viz:

Judgment.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff,
against
THE KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

Taxes.

Be it remembered that at the August term, 1887, of this court, and on the ninth day of August, 1887, this cause coming on to be heard on the pleadings filed in said cause, and the plaintiff and de-

fendant appearing by attorneys, and all and singular the matters and facts being submitted to the court, and the court, after hearing all the evidence in the cause and the arguments of counsel, took said cause under advisement and for further consideration until the February term, 1888, of this court; and now, on this the sixth day of February, one thousand eight hundred and eighty-eight, and on the first day of the February term, 1888, of this court, the court, after considering all the matters and facts and evidence in said cause, doth find that at the time of the commencement of this suit William H. Wine was the legally qualified and acting collector of Scotland county, Missouri, and that the defendant was at the institution of this suit and still is a railroad corporation duly organized and existing according to law, and that said defendant owns, operates, and controls twenty-two and one-half miles of railroad
79 in said county, consisting of road-bed, superstructure, and right of way, together with rolling stock, water tanks, engines, cars, depots, and other buildings; also lot nine (9), in Oak Ridge Addition to the city of Memphis, in said county, and lots seven (7) and eight (8), in block five (5), in the town of Granger, in said county.

The court further finds that all of the aforesaid property of defendant in said county was subject to taxation in said county for the year 1886, and that there was legally assessed and levied against the aforesaid property of defendant in said county of Scotland for the year 1886, for State, county, school, municipal, and other purposes, the aggregate sum of fourteen hundred and ninety-two dollars and seven cents.

The court further finds that at the time of the assessment and levy of the aforesaid taxes against the said property of defendant that the said railroad and other property of defendant in said county was owned, operated, and controlled by the Missouri, Iowa and Nebraska Railway Company, a corporation duly organized and existing according to law, and that the aforesaid taxes so assessed and levied for the year 1886 was at the time of said levy a prior lien against defendant's said property in favor of the State of Missouri, and that after the aforesaid assessment and levy of said taxes was made and before the commencement of this suit the said Missouri, Iowa and Nebraska Railway Company sold and transferred its said railroad and other property in Scotland county to the defendant.

The court further finds that at the commencement of this suit the aforesaid taxes so levied against said property were a prior lien over all incumbrances against said property, and that
80 the defendant took and now holds said railroad property in said county subject to the payment of same. The court further finds that of the aforesaid taxes so assessed and levied against said property of defendant for the year 1886 there is now due and unpaid for State purposes the sum of four hundred and three dollars; for county purposes, the sum of six hundred and four and $\frac{50}{100}$ dollars; for school purposes in said county, the sum of four hundred and sixty-three and $\frac{45}{100}$ dollars, and for city and other municipal purposes, the sum of twenty-one and $\frac{12}{100}$ dollars, amount-

ing in the aggregate to the sum of fourteen hundred and ninety-two dollars and seven cents, together with one per centum each month on said aggregate sum from the first day of January, 1887, until the same is paid as penalties thereon.

It is therefore considered and adjudged by the court that the plaintiff have and recover of and from the defendant, The Keokuk and Western Railway Company, the said sum of fourteen hundred and ninety-two dollars and seven cents, the taxes and debt aforesaid found to be due, together with the penalties, interest, and costs thereon, and that the same be, and is hereby, considered and adjudged to be a first and prior lien in favor of the State of Missouri on the said road-bed, superstructure, real estate, and other property of defendant aforementioned in said county, and that a special *fieri facias* be issued against said property, and that the same be sold to satisfy said taxes, penalties, interest, and costs.

On February 9, 1889, defendant filed its motion for a new trial of this cause.

81 And afterwards, on February 15th, 1888, the court overruled said motion in words and figures following, to wit:

STATE OF MISSOURI *ex Rel.* W. H. WINE, Collector of Scotland County, Missouri, Plaintiff,
against } Taxes.
KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

Now, at this day, this cause coming on to be heard upon defendant's motion for a new trial of this cause, and the court, being fully advised in the premises, doth overrule said motion.

And afterwards, on February 15th, 1888, defendant filed its affidavit for appeal, which is in words and figures following, to wit:

STATE OF MISSOURI,
County of Scotland, } *ss:*

In the Circuit Court. February Term, 1888.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue of Scotland County, Plaintiff,
against
THE KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

F. T. Hughes, of lawful age, being duly sworn, upon his oath says that he is the president and agent of the defendant railway company in the above-entitled cause; that he knows the facts, and that the appeal prayed for by the defendant is not made for vexation or delay, but because affiant believes that the appellant is aggrieved by the judgment and decision of the court.

F. T. HUGHES.

82 Subscribed and sworn to Feb'y 15, 1888.

JAS. P. NESBIT, *Co. Cl'k.*

And afterwards, on February 15th, 1888, the following proceedings were had in said court, to wit:

STATE OF MISSOURI *ex Rel.* W. H. WINE, Collector of Scotland County, Missouri, Plaintiff,
against
KEOKUK AND WESTERN RAILWAY COMPANY, Defendant. } Taxes.

Now, at this day, comes the defendant, by its attorney, and files the affidavit of F. T. Hughes for an appeal in this cause, and an appeal — granted by the court to the supreme court of Missouri and leave granted defendant to file its appeal bond in the sum of four thousand dollars within ten days from the adjournment of court.

Bond in Appeal to Supreme Court in a Civil Case.

In the Circuit Court, Scotland County, State of Missouri.

STATE OF MISSOURI at the Relation and to the Use of W. H. WINE, Collector of the Revenue of Scotland County, Plaintiff, Respondent,
vs.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant, Appellant.

Appellant's bond.

Know all men by these presents that we, The Keokuk and Western Railroad Company, as principal, and M. K. Jessup and C. R. Combs, as securities, are held and firmly bound unto the State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland county, in the sum of four thousand dollars; for the payment of which we hereby firmly bind ourselves and our heirs, executors, and administrators.
83

Upon the following condition, however: That whereas the State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland county, has in the circuit court, Scotland county and State aforesaid, in a certain cause therein pending entitled State of Missouri at the relation of and to the use of W. H. Wine, collector of the revenue of Scotland Co., against The Keokuk and Western Railroad Company, recovered a judgment against the said Keokuk and Western Railroad Company; and whereas the above-named appellant has, according to law, been granted an appeal to the supreme court of the State of Missouri in said cause:

Now, therefore, if the said The Keokuk and Western Railroad Company shall prosecute its appeal with due diligence to a decision in said supreme court, and shall perform such judgment as shall be given by the said supreme court in the premises and such a judgment as the said supreme court shall direct the circuit court of Scotland county aforesaid to give, and in the case the judgment first aforesaid of the last-named court or any part thereof shall by said supreme court be affirmed, if then the said appellant shall comply with and perform the same so far as it be affirmed, and shall pay all damages and costs which may be awarded against the said appellant by the said supreme court, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this 20th day of February, 1888.

84 KEOKUK AND WESTERN RAILROAD COMPANY, [SEAL.]
By F. T. HUGHES, *President.*
MORRIS K. JESSUP, [SEAL.]
By F. T. HUGHES, *His Attorney.*
C. R. COMBS. [SEAL.]

Approved by me—

——— ———,
Judge of the —.

Filed Febr'y 21, 1888.

C. F. SANDERS,
Cir. Clerk.

And afterwards, on February 21st, 1888, the following proceedings were had in said court, to wit:

STATE *ex Rel.* WILLIAM H. WINE, Collector of Scotland County, Missouri, Plaintiff,
against
KEOKUK AND WESTERN RAILWAY COMPANY, Defendant. } Taxes.

Now comes defendant and files its bond in appeal in the sum of four thousand dollars, which bond is seen and examined by the court and by the court approved.

And on February 20th, 1888, the following proceedings were had in said court, to wit:

STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Plaintiff,
against
85 KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

Now comes the defendant, by its attorney, and presents to the court its bill of exceptions, which is examined by the court and signed and sealed by the judge thereof and ordered filed and made a part of the record in this cause.

Which bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

In the Circuit Court of Scotland County, Missouri. February Term, A. D. 1888.

STATE OF MISSOURI at the Relation and to the Use of W. H. WINE, Collector of the Revenue of Scotland County, Missouri, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

Be it remembered that the trial of this cause was begun at the August term, 1887, of this court, when the following proceedings were had, to wit:

Upon consent of the parties a jury was waived and the cause submitted to the court for hearing.

It was admitted in open court by both parties that the railway taxes sued for were levied on the property of said Missouri, Iowa and Nebraska Railway Company for the year stated in the amended petition, and that the amount claimed is the amount due, provided the court shall find that the plaintiff is entitled to recover on the law and facts in this case.

86 It was further admitted that the said railway upon which the taxes were levied was constructed and put in operation during the year eighteen hundred and seventy-one through said Scotland county, and that it was completed to the State line between the States of Missouri and Iowa, as stated in the defendant's amended answer, about December, eighteen hundred and seventy-two.

Defendant then, to sustain the issues on its part, offered evidence as follows, to wit:

The charter of the Alexandria and Bloomfield Railroad Company, being an act of the General Assembly of the State of Missouri entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, in words and figures as follows, to wit:

Also an act of the said General Assembly amending the charter thereof, entitled "An act to amend an act entitled An act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 19th, 1866.

Defendant then offered in evidence a duly certified copy of the articles of consolidation of the said Alexandria and Nebraska City railroad with the said Iowa Southern Railway Company, by which the said Missouri, Iowa and Nebraska Railway Company was formed, which is in words and figures as follows, to wit:

OFFICE OF THE SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigle, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of consolidation of the "Iowa South-

ern Railway Company" and the "Alexandria and Nebraska
87 City Railroad Company," under the name and style of the
"Missouri, Iowa and Nebraska Railway Company."

Filed May the 11th, 1870, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office this ninth day of September, A. D. eighteen hundred and seventy-three.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State.

Articles of Consolidation.

Articles of consolidation, made and entered into this — day of ——, in the year of our Lord one thousand eight hundred and seventy, between the Iowa Southern Railway Company, a corporation existing under the laws of the State of Iowa, and the Alexandria and Nebraska City Railroad Company, a corporation existing under the laws of the State of Missouri.

Whereas the railways respectively owned by the said companies above named constitute a continuous line of railway for the passage of cars from the city of Alexandria, in the State of Missouri, to a point on the Missouri river in Iowa, near Nebraska City, in the State of Nebraska, and the directors of the said companies, upon mature consideration, have determined that the interests of the respective stockholders of said companies and the public interests and convenience will be greatly promoted by union of their several roads into
one road and by the consolidation of the respective stocks of
88 said companies into one common consolidated stock;

And whereas the said companies are authorized by acts of the Legislatures of the States of Iowa and Missouri to affect such union of their respective roads and to form by consolidation of their respective rights and franchises one company, and have agreed so to do, upon the terms and conditions hereinafter mentioned and contained:

Now, therefore, this agreement, made by and between the corporations above named, parties hereto, and by virtue of the authority conferred upon them by the laws of the said several States, witnesseth: That the said Iowa Southern Railway Company and the said Alexandria and Nebraska City Railroad Company do agree and each for itself doth severally agree that the said companies shall be consolidated into and form one corporation under the name and style of the Missouri, Iowa and Nebraska Railway Company, and in pursuance of the said acts of the Legislature of the said States of Iowa and Missouri the said parties do hereby prescribe the following terms and conditions of the said consolidation, and do respectively agree thereto and to the mode of carrying the same into effect as herein provided for:

Article 1st.

The directors of said Missouri, Iowa and Nebraska Railway Company shall be for the present thirteen in number, which said number may at any future election held by the stockholders, by a resolution first passed by a two-third vote of said stockholders, be reduced to nine in number, all of whom said directors shall be stockholders in the corporation.

89 The following-named persons shall constitute the first board of directors of said Missouri, Iowa and Nebraska Railway Company:

Jas. FitzHenry, Geo. M. Ochiltree, E. Pratt Buell, Peter W. Plantz, Enoch Hinckley, William Bradley, S. A. Dickey, C. H. Howell, John A. Talbot, Jac. Rummel, C. W. Brown, J. A. Breaseale, and F. M. Drake, and shall hold their office until the first Monday in January, A. D. 1871, as provided and in accordance with the provisions of this article.

Article 2nd.

Said directors shall, at their first meeting after their election, elect a president and vice-president from their own number, and shall also then, or as soon thereafter as convenient, elect or appoint a secretary, treasurer, and superintendent of said company, and provide for the appointment of such other officers, engineers, clerks, agents, assistants, and other employees as they shall from time to time find necessary for the proper transaction of the business of said company.

Article 3rd.

The annual election of directors shall be held on the first Monday of January of each year, at Centerville, Iowa, provided if such election be not held as aforesaid it may be held at any subsequent period, of which three weeks' notice shall be given in two newspapers on the line of said railroad, one of which shall be published at Centerville, Iowa, or wherever the principal place of business may at the time of said publication be, and the other in Missouri, unless said
principal place of business should be in Missouri, in which
90 case the publication should be in Iowa. The persons receiving the highest number of votes shall be directors to succeed those whose term of office shall have expired.

Article 4th.

Each stockholder shall be entitled to vote, in person or by proxy duly authorized, one vote for each share of stock he may own at the commencement of each election.

Article 5th.

After the consolidation herein provided for is perfected, stockholders in said consolidated company, only by surrender and exchange of their certificates in their several companies, shall be entitled to vote at any meeting of the stockholders of said consolidated company.

Article 6th.

The capital stock of the said Missouri, Iowa and Nebraska Railway Company shall be thirteen millions of dollars, to be divided into one hundred and thirty thousand shares of one hundred dollars each, and the directors may increase the capital stock thereof when necessary upon the approval of a majority of the stockholders of said consolidated company.

Article 7th.

The private property of the stockholders is hereby exempted from liability for the debt of the company except to the unpaid instalments of any stockholder. The stock of said corporation shall be transferable under such rules and regulations as be deemed expedient by the board of directors.

Article 8th.

Upon the surrender of the present certificates of stock now issued
and outstanding of either of the companies herein consoli-
91 dated, a like amount of the stock at par of the consolidated
company shall without delay after its consolidation be issued
in return therefor to the holders thereof.

Article 9th.

In all cases in which subscriptions or agreements with either of said companies parties hereto for the stock of either of said companies have been heretofore made by any person or persons or bodies corporate or politic, and said subscriptions or contracts for stock yet remain unpaid or unperformed, either in whole or in part, the stock of said consolidated company shall, upon the payment of said subscription or performance of said contracts, be issued to the said subscribers in the same manner as the said several companies parties thereto would have been bound to issue their stock respectively had not this consolidation taken effect.

Article 10th.

All and singular the rights, franchises, privileges, real estate, depot grounds, rights of way, road-bed, railway, iron rails, engines, cars, machinery, rolling stock, debts, dues, demands, choses in action, and property of every description, name, and nature in — the said Iowa Southern Railway Company and the Alexandria and Nebraska City

Railroad Company have respectively any right, title, or interest, whether in possession, reversion, or remainder, with the appurtenances, upon the ratification of these articles of consolidation, as herein and by law provided, and from thenceforth shall be held, owned, and controlled by the said Missouri, Iowa and Nebraska Railway Company, their successors and assigns, as fully and completely to all intents and purposes as the said several companies do or can
92 now hold, use, or control the same, and no further conveyance or assurance shall be required for the full and complete vesting thereof in said Missouri, Iowa and Nebraska Railway Company.

Article 11th.

All the books, vouchers, records, muniments of title, and other documents pertaining to the business or property of the said several companies parties hereto shall be placed in the office of the secretary of said consolidated company, and the said books, records, vouchers, and papers shall be subject to the proper examination and inspection of all persons interested therein, who shall have the same access thereto as if the same had remained in the office of the original companies.

Article 12th.

The principal place of transacting the business of the consolidated company shall be at Centerville, Appanoose county, Iowa, which place of business may be changed to any other point on said line at any time, in accordance with the provisions of article sixteen of the articles of incorporation of said Iowa Southern Railway Company.

Article 13th.

The line of the consolidated railway shall extend continuously from the city of Alexandria, Clarke county, Missouri, on the Mississippi river, its eastern terminus, as the same is now located and partially graded, to Centerville, in Appanoose county, Iowa; thence west to the Missouri river, contemplated by the charter of the Iowa Southern Railway Company; and the said consolidated company shall complete and put in operation said line of railway from the city of Alexandria, Missouri, to Centerville, Iowa, and from thence
93 westward to the Missouri river as soon as practicable, and shall continue to maintain and operate said railway as a first-class road at, from, and between the said terminus, throughout its entire length, during the corporate existence of said consolidated company.

Article 14th.

The said consolidated company shall assume and fulfill and finally settle, pay, and dismiss all debts owing and all contracts and agreements or other obligations entered into by either of said companies of every kind and nature, legal and equitable.

Article 15th.

In order to facilitate the settlement of all claims, debts, or obligations of either of the companies parties hereto, and properly protect the interest of all parties interested, it is agreed that an auditing committee from each of said companies parties hereto, consisting of three members each, shall be appointed to audit and allow all just claims against their said respective companies or such amounts thereof as they shall find just and equitable. The said committee for the claims against the Iowa Southern Railway Company shall consist of C. W. Bowen, Jacob Rummel, and John A. Talbot, and the said committee for the auditing of the claims of the Alexandria and Nebraska City Railroad Company shall consist of James Fitzhenry, Geo. M. Ochiltree, and Enoch Hinckley.

Article 16th.

The consolidated company, in order to raise money to *contract*, complete, equip, and operate the line of railway formed by this consolidation and every part thereof, shall have the right and 94 power to borrow money to an amount not exceeding two-thirds of its capital stock, and to issue the bonds of the consolidated company therefor, and to secure the payment of the same by a first mortgage or deed of trust on all the property, rights, and franchises of the said consolidated company lying between the Mississippi and Missouri rivers, in the States of Missouri and Iowa.

Article 17th.

It is agreed that these articles of consolidation shall be submitted to the stockholders of each of said companies parties hereto at a meeting thereof called separately for the purpose of taking the same into consideration. Due notice of the time and place of such meeting and the object thereof shall be given. The time of such meeting of the stockholders of the Iowa Southern Railway Company shall be on the 23d day of April, A. D. 1870, and the place the town of Centerville, Appanoose county, Iowa. The time of such meeting of the stockholders of the said Alexandria and Nebraska City Railroad Company shall be on the 2d day of May, A. D. 1870; the place the city of Alexandria, in the State of Missouri.

Article 18th.

In witness whereof the corporate seals of the respective companies parties to this agreement have — hereunto affixed in quadruplicate by order and in the presence of the directors of each of said companies duly convened, a quorum of each of the said boards of directors being so present and assenting thereto, and is attested by their respective signatures hereto on behalf and by order of said boards of directors, and the presidents of each of said companies 95 have also, at the same time and in behalf of the said companies, hereto affixed their names in virtue of resolutions of said several boards of directors passed at respective meetings thereof.

IOWA SOUTHERN RAILWAY COMPANY,
[SEAL.] By F. M. DRAKE, *President.*

Attest: C. W. BOWEN, *Secretary.*

F. M. DRAKE, C. H. HOWELL,
J. A. BREAZEALE, JOHN A. TALBOT,
WM. BRADLEY, JACOB RUMMEL,
S. DICKEY, C. W. BOWEN,
Directors of the Iowa Southern Railway Company.

ALEXANDRIA AND NEBRASKA CITY RAILROAD COMPANY,
[SEAL.] By E. PRATT BUELL, *President.*

E. PRATT BUELL, G. M. OCHILTREE,
E. HINKLEY, S. M. YOUNG,
P. W. PLANTZ,
Directors of the Alexandria and Nebraska City Railroad Company.

I, C. W. Bowen, secretary of the Iowa Southern Railway Company, do hereby certify that, in pursuance of notice published in the *in the* " Loyal Citizen," a newspaper published in the town of Centerville, Appanoose county, Iowa, principal office and place of business of said company; also in a newspaper published in the town of Bloomfield, in the county of Davis and State of Iowa, through which counties the line of said company is established and the road is to be run—

The stockholders of said company met at said company's office, in the town of Centerville aforesaid, on Saturday, the 23rd day of April, 1870, to take into consideration the within — fore-
96 going agreement, and they then and there proceeded to vote by ballot for the adoption or rejection of said agreement; that at the said meeting 8,755 votes were cast, each vote representing one share of stock; that all of the 8,755 votes so cast, — in favor of said adoption of said agreement, and that none of said votes were cast against its adoption, and that the entire number of shares of said stock of said company is 10,280, and that therefore the stock so voted as aforesaid in favor of said agreement is more than four-fifths of the entire stock subscribed of the company.

In witness whereof I have hereunto set my hand and affixed the seal of the said company, at Centerville, Iowa, this 23d day of April, A. D. 1870.

[SEAL.] C. W. BOWEN,
Secretary of the Iowa Southern Railway Co.

I, P. W. Plantz, secretary of the Alexandria and Nebraska City Railroad Company, do hereby certify that, in pursuance of the notice published in the Alexandria Commercial, a newspaper printed and published in the city of Alexandria, Clarke county, in the State of Missouri, the principal office and place of business of said company being in said city of Alexandria, the stockholders of said company met at the Pearl Street House, in said city of Alexandria, on Monday, the 2d day of May, 1870, to take into consideration the within and foregoing agreement, and they then and there proceeded to vote by ballot for the approval or disapproval of said agreement.

That at said meeting 4,873 votes were cast, each vote representing
one share of stock; that — of the said 4,873 votes so cast
97 were in favor of the approval and adoption of said agreement,
and that none of said votes were cast against its adoption, and that the entire number of shares of stock so voted as aforesaid in favor of said agreement is more than two-thirds of the entire stock of the company.

And I further certify that on the same day and immediately after the meeting had adjourned the board of directors of the Alexandria and Nebraska City Railroad Company met, as required by law, to carry the said vote and agreement into effect, and did adopt the name of the "Missouri, Iowa and Nebraska Railway Company" as the corporate name for the consolidated company, and did call in the certificates of stock outstanding in said Alexandria and Nebraska City Railroad Company, to be exchanged for stock in the said new company, by ordering and directi*on* notice to be given to holders of said outstanding certificates of stock to present the same to P. W. Plantz, the secretary of said Alexandria and Nebraska City Railroad Company, to be so exchanged on or before the first day of July, 1870.

In witness whereof I have hereunto affixed the seal of the Alexandria and Nebraska City Railroad Company this third day of May, A. D. 1870.

[SEAL.]

P. W. PLANTZ,
Secretary of the Alexandria and
Nebraska City Railroad Company.

Defendant then offered in evidence the record of this court in the former case of Scotland County against The Missouri, Iowa and
Nebraska Railway Company, commenced in court against
98 the said company about the April term, A. D. 1873, wherein
the said county claimed certain taxes for the year 1872 to be due from said railway company, to show that the said circuit court found for defendant in that case, and that the said judgment for the defendant was by the supreme court of Missouri affirmed.

And it is agreed that the statement of facts as set forth in the statement and opinion of the said supreme court of Missouri in the said cause, found in 65th volume, commencing at page 123, of the Missouri Supreme Court Reports, contain all of the facts in said cause on which the said cause was tried and decided, and that the same may be considered by the supreme court of this State in the hearing of this cause when the same is reached for hearing without being copied in this transcript or bill of exceptions.

This was all of the evidence offered or received in this cause.

Wherefore the defendant prayed the court to declare the law to be as follows:

The court, upon the evidence and pleadings in this cause, will find for the defendant.

Which instruction the court refused; to which refusal of the instruction then prayed the defendant, by its counsel, did then and there at the time except.

Whereupon the court took the cause under advisement and continued the same until the next February term, 1888, of said court.

And now in this circuit court of Scotland county, February, the sixth day of said month, being the first day of said term of court, this cause again coming on for further hearing before the court, the following proceedings were had:

99 The court, of its own motion, gave the following written opinion as his conclusion of the law in this case:

Opinion.

The K. & W. R. R. is the successor of the M., I. & N. R. R. and owns real estate and road-bed in Scotland county. The M., I. & N. has never paid any taxes; wherefore, for the taxes assessed against it for the year 1886, this suit has been instituted by the collector of this county. In 1857 the Alexandria & Bloomfield Railway Company was chartered by an act of the Legislature. Its charter provided that the stock of the company should be exempt from taxation for a period of twenty years from the completion of the road. Thereafter the name of the company was changed to the Alexandria & Nebraska City R. R. The Iowa Southern R. R. Company was a non-resident of the State and a creature of the laws of Iowa. That the clause in the charter of the Alexandria & Bloomfield Company exempted the property of that road, if any existed, from taxation for the period limited there is no question. It is equally clear that any property that it might have thereafter acquired in conformity to its charter would likewise have been exempt.

The Iowa Southern Company, of course, had no right of exemption from taxation in this State. In the year 1865 what is known in common parlance as the Drake constitution was adopted by the people of this State. It provided that all property, except such as was used for certain educational, religious, and public purposes, should be subject to taxation. This was, in the year 1871, followed by appropriate legislation providing for a uniform assessment and collection of taxes against the railroads of this State. In the year 1870 the A. & N. C. and the I. S. railroads consolidated under

100 the provisions of an act passed by the Legislature and approved March 24th, 1870. (See Wagner's Statutes, 1872, pages 314 and 315.) Thus the M., I. & N. R. R. Company was formed. It may safely — presumed from the evidenced that the A. & N. C. road never owned any part of the road-bed or other real estate sought to be charged with taxes. The articles of consolidation of the two companies, now before me, together with the proper certificates thereto attached, show that all the stock of the A. & N. C. Rail-

road Company was promptly called in to be exchanged for stock in the new company—the M., I. & N. The Supreme Court of the United States has repeatedly held that where one railroad which is exempt from taxation consolidates with another not exempt, that the right of exemption can only be passed to the new and consolidated company so as to exempt that part of the road in the hands of the new company which was owned and controlled by the company and was exempt before the consolidation.

This is held to be the case, although the law under which the consolidations were made provided that the new company should have all the rights, privileges, and immunities of the old companies. (P. & W. R. R. Co. *vs.* Maryland, 10 Howard, 376; Tomlinson *v.* Branch, 15 Wallace, 460; Delaware R. R. Co. tax case, 18 Wallace, 206; Central R. R. Co. *vs.* Georgia, 92 U. S., 665.)

In such cases the right of exemption from taxation will not be held to pass and vest in the consolidated company in favor of after-acquired property unless the intention of the Legislature is so plainly shown in the language of the law consenting to such consolidation to be in favor of the proposition that the right of the State to
tax the new road has been yielded up to the exclusion of
101 every reasonable doubt.

In case of Morgan *v.* Louisiana, 93 U. S., at page 222, Judge Field says: "As has been often said by this court, the whole community is interested in retaining the power of taxation undiminished, and has the right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear." Judge Waite says in Railroad Company *vs.* Commissioners, 103 U. S., at page 3: "Grants of immunity from taxation are never presumed; on the contrary, all presumptions are the other way, and unless an exemption is clearly established all property must bear its just share of the burdens of taxation."

That court has always ruled with great strictness in favor of the right of the State to tax in such cases, and similar remarks by it could be quoted without number.

Therefore I hold that no right of exemption passed from the A. & N. C. road so as to benefit property which the M., I. & N. thereafter acquired in Scotland county. This view is supported by Wagner *vs.* Mety, 69 Mo., page 150. If the A. & N. C. road had been running through Scotland county before the consolidation the case might been different, but that company never built a foot of road and never owned an inch of real estate in this county or elsewhere, so far as I am advised; but because the supreme court of this State in the Scotland county case, 65 Mo., p. 123, decided against the county in an action for taxes an impression has prevailed that this company is not taxable; but the question decided by the Supreme Court of the United States in the first four cases I
have cited do not appear to have been brought to the atten-
102 tion of the court in the Scotland county case. The effect of
the consolidation on after-acquired property is not mentioned
in the opinion, nor does the court say one word as to whether or not

the Legislature of Missouri, in the act which permitted this consolidation, had consented for the right of taxation to pass to the new company; but the great jurist who wrote the opinion in that case does say that it was conceded there that the M., I. & N. Company succeeded to all the privileges of the A. & N. C. road. In view of this concession the court in that case could not have decided the case otherwise than against the county. The cause was being heard in a court that determines issues only on exceptions. Since exemption from taxation was a privilege of the A. & N. C. road, and it was conceded that the M., I. & N. succeeded to all the privileges of that road, as a matter of course it would succeed to the privilege of exemption from taxation. No court could now take the position that the Legislature could have taken the right of exemption from taxation away from the A. & N. C. Company. The Constitution of the United States would forbid this. Now, the Legislature had the clear right to prescribe the terms on which railroad companies should consolidate. A proviso to the act under which this consolidation was made says that "if a railroad of another State shall lease a railroad the whole or part of which is in this State or make arrangements for operating the same, as provided in this act, or shall extend its road into this State, then in such case such part of said railroad as is in this State shall be subject to taxation."

The Missouri supreme court in State *ex rel.* v. C., B. & K. C. R. R. Co., 89 Mo., page 523, says this proviso above quoted applies
103 to a purchase of a road in this State by a non-resident road
under a foreclosure proceeding, and further says it is broad enough to cover all those cases "where the company of another State is allowed to make arrangements for the operation of the road in this State, whether by lease, purchase, or otherwise." Since consolidation is provided for in the act, why not hold, then, that the proviso in reference to taxation will cover a case where a railroad of another State has consolidated with one in this State and built thereafter its railroad into this State?

It may throw some light on this question to quote again from the opinion in the case last cited, while in discussion of this act of the Legislature and this proviso. The court says "the manifest policy was to get legislative control of all railroad corporations."

This decision reannounces the doctrine so well settled, that exemption from taxation is a personal privilege to the corporation or person to whom it is given, incapable of transfer unless there is express statutory authority therefor.

It says franchises are positive rights or privileges, without which the road of the company could not be successfully worked, and that immunity from taxation is not one of them. A Federal question is presented in this case, because it is insisted that the laws of this State, passed subsequently to the charter of the A. & N. C. road, in 1857, making all railroad property taxable, are unconstitutional in so far as this defendant is here concerned. It would be the duty of this court to follow the U. S. Supreme Court; therefore, in passing on such questions, I think the rulings of that court are clearly

104 in favor of the constitutional right of the county of Scotland to collect this tax.

Furthermore, I think the case of Wagner *vs.* Mety, and State *vs.* C., B. & K. C. R. R. Co., by implication, overruled the Scotland county case.

Cooley on Taxation, page 146, says: "The intention to exempt must, in any case, be expressed in clear and unambiguous terms. All exemptions are to be strictly construed. They embrace only what is within these terms.

Subjecting this act of consolidation in question to this test, and in the light of this case in the 89th Mo. Report, I am of the opinion that the judgment should be for the plaintiff.

To the giving of which and to each and every part thereof the defendant excepted at the time.

Under the law as found and declared by the court, the court found for the plaintiff.

And on the 9th day of February, A. D. 1888, within four days after the finding of the court, the defendant filed its motion for a new trial as follows, to wit:

STATE OF MISSOURI,
County of Scotland, } *ss:*

In the Circuit Court of Scotland County. February Term, 1888.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector, Plaintiff,
against
THE KEOKUK AND WESTERN RAILROAD COMPANY, Defendant.

105 Now comes the said defendant and moves the court to set aside the finding of the court and judgment in the above-entitled cause, and grant the defendant herein a new trial for the reasons—

1st. The finding of the court and judgment should have been for the defendant instead of the plaintiff.

2nd. Upon the pleadings and evidence the finding and judgment of the court should have been for the defendant.

3rd. The finding of the court is against the evidence presented at the trial.

4th. The finding of the court is against the law and the evidence.

4th. Because the court erred in refusing to give the instruction number one.

5th. Because the court erred in his conclusion of law, as set forth in his written opinion filed in the cause.

6th. Because, upon the pleadings in the cause, the finding of the court should have been for the defendant instead of the plaintiff.

7th. Because the court erred in holding that the effect of the consolidation of the Alexandria and Nebraska Railroad Company with the Iowa Southern Railway Company was to create a new company by the name of the Missouri, Iowa and Nebraska Railway Company, and that said new company did not receive and obtain by said consolidation the exemption from taxation contained in the Alexandria & Bloomfield Railroad Company, as claimed in defendant's answer.

8th. Because the court erred in holding that the Missouri, Iowa and Nebraska Railway Company did not by the consolidation aforesaid succeed to and become vested with all the
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rights — privileges contained in the said charter of the Alexandria & Bloomfield Railroad Company, and thereby exempt from taxation.

9th. That the act of the Legislature under which the plaintiff asks to tax the property in controversy is unconstitutional, in this: that it impairs the obligation of the contract of the State with the said Alexandria & Bloomfield Railroad Company as to the rights, privileges, and exemptions to which defendant succeeded by the consolidation, within the meaning of section 10, article 1, of the Constitution of the United States.

10th. Because, upon the pleading and evidence in the case, the question at issue were all tried in the case of Scotland County *v.* The Missouri, Iowa and Nebraska Railway Company, as claimed in defendant's answer, and are and have been ever since *res adjudicata.*

11th. Because he held the property of said Missouri, Iowa and Nebraska Railway Company liable for the taxes sued for in the hands of defendant impairs the obligation of contract between the State of Missouri and this defendant within the meaning of the said section and article of the Constitution of the United States.

12th. Because the pleadings admit that defendant purchased the property for value under the decree of foreclosure set out in the answer, relying in the fact that it was not liable for the taxes aforesaid by reason of the exemption aforesaid, and now holds the property so liable, impairs the obligation of contract between the defendant and the State of Missouri within the meaning of the said article and section of the Constitution of the United States.

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F. T. HUGHES &
R. D. CRAMER,
Att'ys for Defendant.

Which said motion the court, on the 15th day of February, 1888, overruled; to which ruling and order of the court the defendant then and there excepted at the time.

It therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed, sealed, and made part of the record, which is done this 20th day of February, A. D. 1888.

BEN. E. TURNER, [SEAL.]
Judge Circuit Court.

Filed Febr'y 20, 1888.

C. F. SANDERS,
Clerk Circuit Court.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, C. F. Sanders, clerk of the circuit court within and for the county of Scotland and State of Missouri, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause of The State of Missouri at the relation and to the use of William H. Wine, collector of the revenue within and for the county of Scotland and State of Missouri, plaintiff, against Keokuk and Western Railway Company, defendant, as fully as the same appears on file and of record in my office.

108 In testimony whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in Memphis, Missouri, this first day of May, 1889.

[SEAL.]

C. F. SANDERS,
Clerk Circuit Court,
Per CHAS. L. MOORE,
Deputy Clerk Circuit Court.

109 And afterwards, on the 14th day of May, 1889, there was filed in said cause an assignment of errors; which said assignment is in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri. April Term, 1889.

STATE OF MISSOURI *ex Rel.* W. H. WINE, Respondent,
vs.
KEOKUK AND WESTERN R. R. Co., Appellant.

And now comes the said appellant and says that in the record and proceedings of the court below in the above-entitled cause there is manifest error, and for error said appellant assigns the following, to wit:

1. That said court admitted improper and illegal testimony offered by respondent.
2. That said court rejected proper and legal testimony offered by appellant.
3. That the court gave to the jury improper and illegal instructions.
4. That the court refused to give to the jury proper and legal instructions offered by appellant.
5. That the verdict was against the evidence.
6. That the verdict was against the law.
7. That the verdict was against both law and evidence and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the respondent when it should have been rendered for the appellant.

110 That said court overruled the motion for a new trial made by appellant.

10. That said court erred in holding that the property in question was subject to taxation for the years sued for.

F. T. HUGHES,
H. S. PRIEST,
GEO. S. GROVER.
Att'ys for Appellant.

And afterwards, on the 20th day of May, 1889, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri. April Term, 1889.

STATE *ex Rel.* W. H. WINE, Coll., etc., Resp.,
v.
KEOKUK AND WESTERN R. R. Co., App.

Comes now the said respondent, by attorney, and files his notice and therewith a motion to affirm the judgment in this cause.

Which said notice and motion *is* in the words and figures following, to wit:

To Felix T. Hughes, president K. & W. R. R. Co.:

Take notice that on May 20th, 1889, I shall apply to the supreme court of Missouri, in open court, at the court-room, in Jefferson City, for leave to file on that day a motion to affirm the judgment of the Scotland county circuit court in the case of The State of Missouri, *ex rel.* Wm. H. Wine, collector, against The Keokuk and Western Railroad Company, appellant, where and when you
111 can appear and object if you so desire.

Dated at Memphis, Missouri, this 1st day of May, 1889.

JOHN C. MOORE,
Att'y for Respondent.

Received the above notice this — day of May, 1889.

F. T. HUGHES,
Att'y for Appellant.

In the Supreme Court of Missouri. April Term, 1889.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector, Respondent,
v.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Motion to Affirm Judgment.

Now comes respondent in appeal, by her attorneys, and moves the court to affirm the judgment of the circuit court of Scotland county, heretofore rendered herein, for the following reasons, to wit:

1st. Because the transcript of the record proper does not show that the bill of exceptions was ever filed in the said Scotland county circuit court.

2nd. Because the record does not show that said bill was ever filed in said court.

3d. Because the supposed bill of exceptions contained in the transcript in this cause does not contain the evidence it purports to contain, in this: that it does not contain a copy of the charter which it alleges was put in evidence, and it does not contain the record of the proceedings of the case of Scotland County against The Missouri, Iowa and Nebraska Railway Company, reported in the
112 65 Missouri printed Reports, at page 123, which it alleges
was put in evidence, and does not contain an instruction to the clerk to copy, and is therefore a skeleton bill because of failure to contain said evidence.

JOHN C. MOORE,
Attorney for Respondent.

And on said 20th day of May, 1889, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri. April Term, 1889.

STATE *ex Rel.* W. H. WINE, Coll., Resp.,
v.
KEOKUK & WESTERN R. R. Co., App.

Come now the parties, by attorneys, and, after argument herein, submit these causes to the court.

And afterwards, on the 4th day of November, 1889, the following further proceedings were had in said cause, to wit:

Supreme Court of Missouri. October Term, 1889.

THE STATE OF MISSOURI at the Relation and to the Use of WILLIAM H. WINE, Collector of the Revenue within and for the County of Scotland and State of Missouri, Respondent,
vs.
THE KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Appeal from Scotland County Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently ad-
vised of and concerning the premises, do consider and ad-
113 judge that the judgment aforesaid, in form aforesaid by the
said Scotland county circuit court rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution.

(Opinion filed.)

Which said opinion is in the words and figures following, to wit:

In the Supreme Court of Missouri. October Term, 1889.

STATE to Use of WINE, Collector, etc., Respondent,
vs.
THE KEOKUK & WESTERN R. R. Co., Appellant.

Opinion of the Court.

This is a suit in the name of the State to the use of Wine, collector of Scotland county, to enforce the payment of State, county, school, and municipal corporation taxes levies on the property of the Missouri, Iowa & Nebraska Railway Company for the tax year ending in August, 1886. The defendant corporation became the purchaser of the railroad property after the taxes were levied, and the defense is that the property was exempt from taxation whilst owned by the Missouri, Iowa and Nebraska Railway Company. The circuit court ruled against the defendant, and hence this appeal.

The Legislature, by the act of Feb. 9, 1857 (Acts of 1856, p. 94), incorporated the Alexandria & Bloomfield Railroad Company, with power to build a railroad from Alexandria, in Clarke county, in the direction of Bloomfield, in the State of Iowa, to a point on the line between this and that State. The act provides that the
114 construction of the road shall be commenced within ten
years after its passage and completed within ten years thereafter, and that "the stock of said company shall be exempt from taxation for a period of twenty years after its completion." It is alleged in the answer and not denied that the company was duly organized in 1864 and then commenced and proceeded to carry out its proper business and railroad operations under the act.

The name of the company was changed to that of the Alexandria and Nebraska City railroad by authority of the act of Feb. 19, 1866 (Acts of 1865 & '6, p. 222). There are several sections in this act, and the fourth section provides that the whole or any section thereof shall be adopted by the board of directors, and shall be in full force from and after the adoption. It is alleged and not denied that the company adopted the first section, which authorized the change of name, but it does not appear that any of the other sections were adopted.

The Alexandria and Nebraska City Railroad Company and the Iowa Southern R'y Co., a corporation organized under the State of Iowa, were consolidated on the 3d May, 1870, under the name of the Missouri, Iowa and Nebraska Railroad Company, thus forming one continuous line from Alexandria, on the Mississippi, in this State, to a point in the State of Iowa near Nebraska City, on the Missouri river. It was admitted upon the trial that the railroad was constructed and put in operation through Scotland county in 1871 and completed to the State line in December, 1872. It does not appear how much work had been done in this State before the consolidation.

In 1886 and after the taxes in question had been levied
115 the entire consolidated road was sold under a decree of fore-

closure entered in the circuit court of the United States for the southern district of Iowa to certain individuals, who conveyed it to the defendant corporation, The Keokuk & Western R. R. Company.

The period of twenty-years exemption had not expired when the taxes in question were levied by the county court of Scotland county. The general question, therefore, is whether the property was exempt from taxation while owned by the consolidated company.

It was held in the case of Scotland County *v.* this consolidated company (65 Mo., 123), brought to recover taxes for the year 1872, that the exemption of the stock of a corporation is an exemption of the property represented by the stock. The court then proceeds to say: "That the present defendant succeeded to all the privileges and liabilities of the Alexandria & Bloomfield Company is conceded.

It is insisted, however, that sec. 16, art. 2, of the constitution of 1865 operated to repeal the exemption contained in the defendant's charter." It was then held that the designated section of the constitution did not and could not destroy rights existing when it was adopted, and that the Legislature did not repeal the exemption by the tax law of March, 1871. As to the questions actually considered in that case it is sufficient to say we are satisfied with what was then said and ruled. The question whether the consolidated company succeeded to the right of immunity from taxation contained in the charter of the Alexandria & Bloomfield Company was then taken for granted on what appears to have been a concession of counsel in this court, and that question we will now consider.

116 The consolidation of the rights, privileges, franchises, and properties of two or more railroad companies into one, where there is no provision of the statute or constitution to the contrary, leaves the portions of the road thus formed subject to the same rules of taxation that existed before the consolidation. That portion of new line which was exempt will continue to be exempt and that portion which was subject to taxation will continue subject to taxation. This, we think, is the result of the following cases: Phil. & Wilm. R. R. *v.* Maryland, 10 How., 376; Tomlinson *v.* Branch, 15 Wall., 460; Central R. R. & Banking Company *v.* Georgia, 92 U. S., 665; Railroad *v.* Virginia, 94 U. S., 718. The Alexandria & Nebraska City R. R. Co. was unquestionably exempt from taxation down to the time of the consolidation, namely, 3d May, 1870; and under the rule of the cases just cited the new company acquired that immunity so far as concerns the Missouri property, unless the law under which the consolidation was effected by the voluntary act of the two corporations produces a different result.

The 16 sec. of art. XI of the constitution of 1865, which went into operation before the date of the act under which the consolidation took place, provides: "No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools and such as may belong to the United States, to this State, to counties, or to municipal corporations within this State."

The plaintiff takes the ground that when two railroad companies are consolidated they thereby surrender their charters, and the resultant company takes its powers and rights from the law which authorized the consolidation. In other words, that the old companies are dissolved and that a new one springs into existence.
117 If it be true that the Alexandria & Nebraska City Company was dissolved by the act of consolidation and the new company took its powers from the act authorizing the consolidation, then it must follow that the new company is not exempt from taxation, for the Legislature had been deprived of the power to grant such immunity.

Whether the old companies were dissolved must depend upon the terms and provisions of the act of March 20, 1869 (Acts of 1869, p. 75), under which the consolidation took place, and we therefore set out the important portions of it. Section one provides: "That any railroad company organized under the general or special laws of this State whose track shall, at the line of the State, connect with the track of the railroad of any company organized under the general or special laws of any adjoining State is hereby authorized to make and enter into any arrangement with such connecting company for the consolidation of the stock of the respective companies whose track shall be so connected, making one company of the two whose stock shall be so consolidated, upon such terms and conditions and stipulations as may be mutually agreed between them in accordance with the laws of the adjoining States in which the road is located with which connection is thus formed." By section 2 the terms and provisions of the agreement must be approved by the holders of a majority of the stock in each of the companies at a meeting called for that purpose or by writing signed by them. Section 3 provides: After the terms of the consolidation have been agreed to in one or the other of the modes above set forth, "it shall be competent for the boards of directors in each of said connecting companies to carry the same into effect and adopt, by a resolution, a new corporate name for the company which
118 shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company and exchange them for stock in the new company, as may have been agreed by the terms of consolidation, and a copy of said consolidation agreement and the resolutions of consolidation and the name adopted for the new company shall be filed with the secretary of state, and shall be conclusive evidence," etc. The fourth section is in these words: "Any such consolidated company shall be subject to all the liabilities and bound by all the obligations of the company within this State which may be thus consolidated with one in the adjoining State as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State and be entitled to the same franchises and privileges under the laws of this State as if the consolidation had not taken place."

In Central Railroad *v.* Georgia, *supra*, the Legislature of Georgia

had created two corporations, the Central Company and the Macon and Western Company. Their charters limited the right of taxation to one-half of one per cent. upon their net income. The companies were consolidated under an act passed in 1872, and the question was whether there was a surrender of the charter of Central Company. The court said: "It may be that the consolidation of two companies, or amalgamation, as it is called in England, if full and complete, may work a dissolution of them both, and its effect may be the creation of a new corporation. Whether such be the effect or not must depend upon the statute under which the consolidation takes place and of the intention therein manifested." It is further held that there was no surrender of the charter of the Central Company, but the ruling goes upon the ground that
119 the act only contemplated a merger of the property and franchise of the Macon & Western Company into the Central Company, the latter retaining its name and charter.

In Railroad Company *v.* Georgia, 98 U. S., 359, two railroad companies had been incorporated under the laws of Georgia, one in 1847 and the other in 1856. By their charters they were exempt from taxation beyond a specific amount on their net income. They were consolidated under an act of that State, passed in 1863, which gave them power to consolidate their stocks, and when consolidated to be known as "The Atlantic & Gulf Railroad Company." By that name the stockholders of the companies were empowered to sue and be sued, to purchase and enjoy real and personal property, and to exercise corporate powers. The act also declared that the immunities, franchises, and privileges granted by the charters of the two companies should continue in force except so far as they might be inconsistent with the act of consolidation. Under an act passed in 1874 the property of the new company was taxed as other property. This act of 1874, it was held, would be void, as impairing contracts, but for the act of 1863; and the court, in considering the effect of the consolidation, said: "Did the consolidated companies become a new corporation, holding its powers and privileges as such under the act of 1863, or was the consolidation a mere alliance between two existing corporations, in which each preserved its identity and distinctive existence? Or, still further, was it an absorption of one by another, whereby the former was dissolved while the latter continued to exist? The answer to these inquiries must be found in the intention of the Legislature as expressed in the consolidating act. We think the intention
120 was the creation of a new corporation out of the stockholders of the two previously existing companies. The consolidation provided for was clearly not a merger of one into the other, as was the case of Central Railroad and Banking Company *v.* Georgia, 92 U. S., 665, nor was it a mere alliance or confederation of the two. If it had been, each would have preserved its separate existence as well as its corparate name; but the act authorized the consolidation of the stocks of the two companies, thus making one capital in place of two. It contemplated, therefore, that the separate capital of each company should go out of existence as the capital of that company;

and, if so, how could either have a continued separate being?" The court then goes on to say, in substance, that as this new corporation took its powers and privileges from the act of 1863, it took them subject to the laws then in force, and as a result the tax act of 1874 was held to be valid and binding on the new company. The same line of reasoning is pursued in the tax cases of Railroad Co. *v.* Maine, 96 U. S., 499, and in Railroad Companies *v.* State, 63 Ga., 483.

The effect of consolidating three railroad companies into one, says the court in McMahan *v.* Morrison, 16 Ind., 172, "was a dissolution of the three companies named, and at the same instant the creation of a new corporation." A recent text book says: "The franchises of a corporation formed by the consolidation of several companies are derived wholly from the act of the Legislature authorizing the consolidation. 2 Morawetz on Private Corp's, 2nd ed., sec. 944. The same doctrine is asserted in terms more or less positive in the following cases: Clearwater *v.* Meredith, 1 Wall., 38; Shields *v.* Ohio, 95 U. S., 323; Laumaux *v.* Railroad, 30 Pa. St., 42.

121 Now, the Alexandria and Bloomfield Company had by its charter a capital stock of $2,000,000, divided into shares of $100 each. The act of 1869 contemplates and provides for the surrender of the stock in both of the uniting companies, and accordingly we find it provided in the articles of consolidation that the stock issued by each of the companies and outstanding shall be surrendered and shares of stock of the consolidated company issued therefor.

The act speaks of the consolidated company as "the new company," and the very process by which it is brought into being makes it a new company, and the effect of the consolidation was to dissolve both of the old companies. It is true the act of 1869 does not specifically enumerate the corporate powers and privileges conferred upon the new company, but the corporate powers and privileges are granted by reference to the powers of the company in this State which unites with the one of another State. There is in this respect some difference between this case and that of Railroad Company *v.* Georgia, 98 U. S., 359; but, as said in Railroad Company *v.* Maine, *supra*, a new corporation may be as readily created by the union of two or more companies as by the union of individuals, and its powers and privileges may as well be designated by reference to the charters of other companies as by special enumeration. The conclusion is irresistible that the Missouri, Iowa and Nebraska Railroad Company is a new corporation, created under and by force of the act of 1869. Being thus created after the adoption of the constitution of 1865, the Legislature had no power to grant to it exemption from taxation. The exemption, therefore, did not and could not pass to the new company.

122 We cannot see that the fact that one of the consolidating companies was a Missouri and the other an Iowa corporation affects the conclusion just stated. The new company in this State is entitled to the privileges and subject to the obligations imposed upon it by the laws of this State, and in Iowa it is a corporation of

that State and subject to the laws thereof. By the Legislature of both States, however, it is but one company.

We are cited to a number of cases which were suits on bonds and involved the legality of subscriptions made by counties to railroad corporations. In some of the cases the subscriptions were made to this consolidated company, but we do not see that any of them are decisive of the question in hand. It must be kept in mind that exemption from taxation will not be recognized unless granted in terms too plain to be mistaken. Railroad *v.* Guffy, 120 U. S., 568; St. Louis *v.* The Boatmen's Ins. & Trust Co., 47 Mo., 150, 155. Such an exemption is a personal privilege and cannot be assigned except by legislative authority. State *ex rel. v.* Railroad, 89 Mo., 536. If the consolidated company is in any sense a new corporation, taking its powers to be a corporation and its privileges from the act of 1869, then it cannot in justice claim the exemption, for the Legislature was powerless to make new grants of that charter.

It seems to us the tax cases before cited are quite conclusive.

The answer sets up the proceedings in the suit of Scotland Co. *vs.* The Missouri, Iowa & Nebraska R'y Co., before mentioned, and reported in 65 Mo., 123. That suit was commenced in 1873 to recover county and school taxes levied for the year 1872. The judgment,
which was for defendant, was affirmed in 1877. It is also
123 alleged in the answer, and not denied, that James Secor and
others, stockholders in the consolidated company, filed their bill in the circuit court of the United States for the eastern district of Missouri to enjoin the company from paying taxes levied by Scotland, Clarke, and Schuyler counties, and to enjoin the county courts, judges thereof, and collectors of said counties from collecting any taxes levied upon the property of the company for the year 1881 or previous years, and that the temporary injunction was made perpetual on the ground that the property of the company was exempt from taxation. According to the answer, the bill was filed in 1881. The case seems to have been determined in 1881. 9 Fed. Rep., 809.

The taxes sued for here are for the year 1886, and they accrued long after those suits were commenced and determined. This suit is for a separate and distinct cause of action, and for this reason we do not see how the former judgments can be a bar to the prosecuting of this suit. The City of Davenport *v.* Railroad, 38 Iowa, 683. But we do not understand it to be claimed by the defendant in this court that those former judgments operate as a technical bar. The claim is that rights have been acquired on the faith of the ruling in the Scotland county case, followed in the injunction case, and to make a different ruling at this time would be to impair the obligation of contracts, and therefore violative of the Constitution of the United States. The answer to this is that this court did not then pass upon the question whether the exemption from taxation passed to the consolidated company. The question of law was doubtless involved in the agreed facts in that case, but there were many
other questions then controverted and they were decided, and
124 we adhere to what was then said in respect of the proposi-

tions of law which were actually considered. It seems to have been asserted on one side and conceded on the other, in this court at least, that the exemption did pass to the consolidated company if the exemption clause in the Alexandria and Bloomfield Company had not been repealed, and the court simply stated the question as not a controverted one in that case. All this appears from the decision itself, and we do not see how it can be said the question which we have been considering was decided in that case. The proposition that the Legislature can, in the face of the constitution of 1865, exempt property from taxation is not to be regarded as established because of a concession made by counsel in some former case. It cannot be fairly said there was a solemn adjudication upon the point we have been considering. The judgment is affirmed.

Ray, C. J., absent. The other judges concur.

F. M. BLACK, *J.*

125 And afterwards, on the 13th day of November, A. D. 1889, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri. October Term, 1889.

STATE *ex Rel.* W. H. WINE, Resp.,
v.
KEOKUK AND WESTERN R'Y, App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion is in words and figures following, to wit:

In the Supreme Court of Missouri. October Term, 1889.

STATE OF MISSOURI *ex Rel.* W. H. WINE, Respondent,
vs.
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

Appeal from Scotland Circuit Court.

Motion for Rehearing.

Now comes appellant, by its attorney, and moves the court for a rehearing on the judgment rendered herein November 4th, 1889, affirming the judgment of the Scotland county circuit court in said cause, for the following reasons, to wit:

1st. Because the court overlooked the question decisive in the case and duly submitted by counsel, that by the special provision of the said act of 1869, authorizing consolidation of railroads in this State, the consolidated company was to be subject to all the obligations to the State and entitled to the same franchises and privileges under the laws of this State as if the consolidation had not taken place; that an exemption from taxation is included in the term "privilege" and was, therefore, in terms transferred to the consolidated company, and if the act is constitutional the exemption passed.

2d. That the Legislature of this State, by a general law approved March 24th, 1885 (Laws 1885, p. 229), recognized the construction contended for here by passing a law providing for taxation
126 of that portion of a rail- not exempt from taxation where such
a road has consolidated with one exempt, as follows: Section 1. "Provided that in any case where a company whose line of road is liable to taxation shall have been or may become consolidated into another corporation entitled, by its charter or otherwise, to exemption from county or other taxation that portion of the road which is liable to taxation as aforesaid shall be assessed separately, etc. This statute was not submitted or the attention of the court called to it on the argument through inadvertance of counsel.

3d. That the court overlooked the fact that in the case of Scotland County *vs.* Missouri, Iowa and Nebraska Railway, 65 Mo., 123, the circuit court did decide, and this court affirmed the decision, that the effect of the consolidation in question under the said act was to transfer to the consolidated company the exemption from taxation contained in the Alexandria and Bloomfield charter.

4th. That such facts were made in the pleadings and an instruction asked directly on the point in the following words: "6th. That the defendant, by the consolidation of the Alexandria and Nebraska City Railway Company, did not succeed to all the rights, privileges, and immunities of the Alexandria and Bloomfield Railway Company."

5th. That the pleadings in the case, and not the opinion of the court, determine the question of *res adjudicata.*

6th. This court overlooked the question, duly presented by counsel, that prior to the time when the said Scotland case was decided this court had fully considered the effect of the laws of this State in relation to consolidation of railroads and the constitution of 1865, bearing on the same, and held that the rights and privileges, among which might be exemption from taxation, remained and adhered to the companies after consolidation.

State *ex rel. vs.* Green County, 54 Mo., p. 552.

That the Supreme Court of the United States in 1876, and prior to the decision in the said Scotland county case, which was made April term, 1877, cited and followed this Green county case, and held that the effect of the consolidation of the said Alexandria and Nebraska City Railroad with the Iowa Southern was to transfer the privileges and immunities of the former company to the consolidated company, notwithstanding the constitution of 1865, and in a case where this constitution was directly called in question.

7th. That when this court, in said Scotland case, said "that the present defendant succeeded to all the privileges of the Alexandria and Bloomfield Company is conceded" it was an expression that the law had been settled on that point and was not then an open question.

8th. The records will show that case was submitted on briefs, and no word of concession can be found in the briefs of counsel or records in the case as to the legal effect of the consolidation.

9th. The writer was one of the counsel in that case and now has the briefs in bound volume; the second heading of the argument is this:

"Does the Missouri, Iowa, and Nebraska Railroad Company, defendant, succeed to the exemption as contained in section 9 of the Alexandria Railroad Company?" & follows:

127 "This is no longer an open question in this State. The statute authorizing the consolidation provides that all the privileges shall pass to the consolidated company in this State the same as if no consolidation had taken place. (See acts 1869, par. 76, sec. 4.) The following cases decided in this State settles the doctrine in the affirmative: State *ex rel. vs.* Green County, 54 Mo., 551. This is in direct accord with the cases of Philadelphia and Wilmington Railroad *vs.* Maryland, 10 How., 376; Tomblinson *vs.* Branch, 15 Wal., 460." Your honors will see this same point is made in the brief and authorities cited on page 125, 65 Mo. R.

10th. That this court affirmed this doctrine again in the case fo Wilson *vs.* Garroutte, 67 Mo., 445, in the following language:

"Chartered exemption from taxation has always been deemed a vested right incapable of revocation or abrogation by the Legislature, or by consolidation in consequence of legislative action or authorization."

Whereupon appellant prays a rehearing on the law and facts in the case, and that the judgment of the Scotland circuit court be reversed.

F. T. HUGHES,
Attorney for Appellant.

And afterwards, on the 18th day of November, 1889, the following further proceedings were had in said cause, to wit:

In the Supreme Court of Missouri. October Term, 1889.

STATE *ex Rel.* W. H. WINE, Coll., &c., Resp.,
v.
KEOKUK & WESTERN R. R. Co., App.

Now, at this day, it is ordered that the motions for rehearing of these causes be, and the same are hereby, overruled.

128 And afterwards, on the 26th day of November, A. D. 1889, the following further proceedings were had in said cause, to wit:

STATE *ex Rel.* W. H. WINE, Collector of Scotland County, Respondent,
vs.
KEOKUK AND WESTERN R'Y Co., Appellant.

Now, at this day, there is presented to the Honorable R. D. Ray, at chambers, a writ of error to reverse the judgment in the above cause; a citation directed to the said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States on the second Monday of October next; a supersedeas bond in the sum of four thousand dollars, and an assignment of errors; which said writ of error is allowed, said citation signed, and bond approved and ordered to be filed and made a part of the record herein.

Which said bond and petition are in the words and figures following, to wit:

Bond.

In the Supreme Court of the United States. October Term, 1889.

Know all men by these presents that we, The Keokuk & Western Railroad Company, as principals, and Thomas De Wit Cuyler, C. R. Combs, as sureties, are held and firmly bound unto the State of Missouri at the relation of William H. Wine in the full and just sum of four thousand dollars, to be paid said State at the relation of William H. Wine, plaintiff, his executors, administrators, and assigns; which payment, well and truly to be made, we bind 129 ourselves, our executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of November, 1889.

Whereas, at the October term, A. D. 1889, of the supreme court of the State of Missouri in a suit pending in said court *court*, between The State of Missouri at the relation of William H. Wine, collector of Scotland county, Mo., as appellee, and The Keokuk & Western Railroad Company, as appellant, jodgment and decision was rendered against said Keokuk & Western Railroad Company, and the said Keokuk & Western Railroad Company have obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the clerk's office of said Supreme Court to reverse the judgment and decision in the aforesaid suit, and a citation directed to the said State of Missouri at the relation of William H. Wine, collector as aforesaid, citing and admonishing them to be and appear at the Supreme Court of the United States, to be held in Washington the 2nd Monday of October, 1890:

Now, the condition of the above obligation is such that if the said Keokuk & Western Railroad Company shall prosecute said writ of error to effect and answer all costs and damages if said Keokuk & Western Railroad Company fail to make good its plea, then the above obligation to be void; else to remain in full force and effect.

KEOKUK & WESTERN RAILROAD
COMPANY,
By F. T. HUGHES, *President.*
THOMAS DE WIT CUYLER. [SEAL.]
C. R. COMBS. [SEAL.]

130 STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I, Thomas De Witt Cuyler, one of the bond sureties on the foregoing bond, upon my separate and several oath do say that I am worth in real property free from incumbrance and subject to execution in the State of Pennsylvania the sum of twenty thousand dollars, as I verily believe.

THOMAS DE WIT CUYLER.

Subscribed and sworn to before me this 20th day of November, 1889.

THEODORCELL ETTING,
Notary Public. [SEAL.]

STATE OF MISSOURI, }
County of Scotland; } *ss*:

I, Charles R. Combs, one of the bond securities on the foregoing bond, upon my separate and several oath do say that I am worth in real & personal property free from all incumbrance and subject to execution in the State of Missouri the sum of five thousand dollars, as I verily believe.

C. R. COMBS.

Subscribed and sworn to before me this 23d day of Nov., 1889.

[SEAL.] ROBERT D. CRAMER,
Notary Public.

Commission expires April 24th, 1890.

131 *Petition for Writ of Error to the Supreme Court of the United States.*

In the Supreme Court of the State of Missouri.

THE STATE OF MISSOURI at the Relation of WILLIAM H. WINE, Collector, Respondent,
vs.
KEOKUK AND WESTERN RAILROAD COMPANY, Appellant.

To the Honorable Robert D. Ray, chief justice of the supreme court of Missouri:

Your petitioner, Keokuk and Western Railroad Company, respectfully petitions and represents—

That — a cause pending in this honorable court, wherein your petitioner, Keokuk and Western Railroad Company, was appellant, and The State of Missiouri at the relation of William H. Wine, collector of revenue, was respondent, said cause having been brought to the supreme court of Missouri on appeal from a final judgment rendered in said cause by the circuit court of Scotland county, in said State, the said supreme court of Missouri, by a final judgment and decision duly filed, announced and rendered on the 4th day of November, A. D. 1889, affirmed the judgment of said Scotland county circuit court.

132 That thereupon appellant, within ten days from said 4th day of November, duly filed and submitted its motion for a rehearing in said cause, which motion the said supreme court over-

ruled on the 18th day of November, 1889, and in all things affirmed said judgment.

That in the judgment and decision of said supreme court of Missouri there is drawn in question the validity of certain statutes of the State of Missouri, namely, chapter 145, of the assessment and collection of the revenue, of the Revised Statutes of Missouri of 1879, with its amendments thereto, on the ground that the same are in contravention of and repugnant to the Constitution of the United States, and particularly that such laws of the State of Missouri are in contravention of and repugnant to section 10, article 1, of the Constitution of the United States.

That the decision and judgment of said supreme court of Missouri is in favor of the validity of said statute laws of the said State of Missouri specially claimed by respondent to be invalid under said article and section of the Constitution of the United States.

Also there was drawn in question in the judgment and decision of said supreme court the validity of certain statutes of the State of Missouri, namely, an act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, and a further statute of the said State, namely, an act to authorize the consolidation of railroad companies in this State with companies owning connecting railroads in adjoining States, approved March 2d, 1869, and the decision was against the validity of said statutes, in this:
that by the 9th section of the said act approved February
133 9th, 1857, the stock of said railway company shall be exempt
from taxation for the period of twenty years after its completion. This language, as understood and construed by the courts of said State, exempts the property of said railroad company.

That the said Alexandria and Bloomfield Railroad Company complied with the terms of said charter and by legislative authority changed its name to the Alexandria and Nebraska railroad, and afterwards, on or about the 3rd day of May, 1870, duly and legally consolidated, under the provisions of the said act approved March 2nd, 1869, with the Iowa Southern Railway Company, the tracks of the respective corporations connecting at the State line between the States of Missouri and Iowa, the said consolidated railway company taking the name of the Missouri, Iowa and Nebraska Railway Company. The said last-named company completed and put in operation said railroad, as provided in the said act incorporating the said Alexandria and Bloomfield Railroad Company, about the 3rd day of December, 1872.

That by virtue of the provisions of said laws and the compliance with the terms thereof said Missouri, Iowa and Nebraska Railway Company was entitled to the privilege of exemption from taxation for the year 1886, and claimed the same in said suit and under the said section 10, article 1, of the Constitution of the United States, and the decision was against the validity of said laws and the privilege of exemption from taxation claimed thereunder.

That in the record and proceedings in said cause it appears that the said supreme court of Missouri, in about the year 1877, in a cause wherein said Scotland County was appellant and the said Missouri, 134 Iowa and Nebraska Railway Company was respondent, decided and affirmed the validity of such exemption; that afterwards, about December 3d, 1886, and while said decision was in full force and effect, the appellant, Keokuk and Western Railroad Company, herein purchased said railway property in good faith for value, relying on the said laws as construed by said supreme court, and that therefore the decision as now made impairs the obligation of contract-, within the meaning of said section 10, article 1, of the Constitution of the United States, specially set up and claimed under such article and section of the Constitution of the United States.

That your petitioner herewith presents a bond, entitled in said cause, conditioned, executed, and certified as required by law, for the payment of all costs and damages if it shall fail to make good its' plea.

That your petitioner also presents an authenticated transcript of the record in this cause, an assignment of errors, and a prayer for reversal.

Wherefore your petitioner humbly prays and petitions that there be granted unto it and allowed a writ of error to the Supreme Court of the United States, with citation to the said State of Missouri at the relation of William H. Wine, collector, to appear and defend in said Supreme Court of the United States on the 2nd Monday of October, 1890.

F. T. HUGHES &
H. S. PRIEST,
Attorney- for Petitioner.

135 STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States a full, true, and complete transcript of the record and proceedings in the within-entitled cause as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of Jefferson, State aforesaid, this 15th day of August, 1890.

Seal of the Supreme Court
of Missouri.

HENRY W. EWING, *Clerk,*
By ROWAN RAY, *D. C.*

Endorsed on cover: Missouri Supreme Court. No. 1286. The Keokuk and Western Railroad Company, plaintiff in error, *vs.* The State of Missouri at the relation of William H. Wine, collector. Filed September 17, 1890.